Petition

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No. ———

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1981

RADIO BROADCASTING CO.,
Petitioner

v.

FRANKLIN TOWN CORPORATION AND REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA AND RICHARD ROE AND JOHN DOE, AND OTHERS,
Respondents

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

S. Jay Sklar
C. George Milner
Suite 1229
Public Ledger Building
Philadelphia, PA 19106
(215) 922-1550

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA. PA 19123 (215) 236-2000

QUESTIONS PRESENTED FOR REVIEW

1. Was a commercial tenant displaced from its place of business by the designated developer of a municipal urban redevelopment project deprived of its rights pursuant to Federal Constitution Amendment V "nor shall private property be taken for public use without just compensation" wherein the tenant was evicted from the business premises following the amicable acquisition in lieu of condemnation of its place of business and was denied any compensation for loss of machinery, equipment and fixtures as it was not deemed a "displaced person" as contemplated by the local Eminent Domain Code?

2. Was a commercial tenant displaced from its place of business by the designated developer deprived of its rights pursuant to Article I, Section 10, Clause 1 ("No state shall pass any law impairing the obligation of contracts") when the state court summarily dismissed the tenant's lawsuit wherein it sought relocation costs "in accordance with Federal Standards and guarantees", as promised in the Redevelopment Contract between the city redevelopment authority and the redeveloper?

3. Was a commercial tenant displaced from its place of business by the designated developer of a municipal urban redevelopment area deprived of its rights pursuant to Federal Constitution Amendment V "nor shall private property be taken for public use without just compensation" wherein the displacement caused the destruction of valuable business machinery, equipment and fixtures and resulted in the tenant becoming a *de facto* condemnee as contemplated by the local Eminent Domain Code?

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Citations to Opinions Below	1
Jurisdiction	2
Constitutional Provisions and Statutes Involved	2
Statement of the Case	4
Reasons for Granting the Writ	8
1. THE DECISION BELOW DENIES PETITIONER RADIO BROADCASTING CO. ITS FUNDAMENTAL CONSTITUTIONAL RIGHT TO "JUST COMPENSATION" FOR MACHINERY DESTROYED TO MAKE WAY FOR A MUNICIPAL REDEVELOPMENT PROJECT	8
2. BY SUMMARILY DISMISSING THE THIRD-PARTY CONTRACT BENEFICIARY LAWSUIT THE STATE COURT DENIED RADIO BROADCASTING CO.'S CONSTITUTIONAL ARTICLE I, SECTION 10, CLAUSE 1 RIGHT AGAINST IMPAIRMENT OF ITS CONTRACTUAL RIGHTS BY STATE ACTION	15
3. THE DECISION BELOW MAY ADVERSELY AFFECT FEDERAL "ASSISTED" PROJECTS BECAUSE STATES MAY CONTRIBUTE REAL ESTATE OR REALTY INTERESTS ACQUIRED WITHOUT PAYMENT OF "JUST COMPENSATION"	16
Conclusion	19
Certificate of Service	20

APPENDIX

Page

Chronology of Significant Events (Stipulation of Facts between all counsel) .. A-1

Excerpts from Federal U.R.A. A-7

Excerpts from Redevelopment Contract Between Franklin Town Corp. and Redevelopment Authority of the City of Philadelphia A-10

Franklin Town Relocation Standards and Guarantees A-19

Letter of January 18, 1973 from Pa. Department of Transportation to owners of Radio Broadcasting Co. A-23

Excerpts from Agreement of Sale dated February 9, 1973 between owner of 1711-13 Vine St. and Franklin Town Corporation A-24

Letter of June 26, 1973 from Redevelopment Authority of City of Philadelphia to Radio Broadcasting Co. A-29

Redevelopment Authority of City of Philadelphia Relocation Specialists' survey sheet and record of relocation meetings with Radio Broadcasting Co. and others A-30

Letter of intent to move dated July 9, 1973 from Counsel for Radio Broadcasting Co. to Redevelopment Authority of City of Philadelphia . A-33

Letter dated July 9, 1973 from Counsel for Radio Broadcasting Co. to Franklin Town Corp. .. A-36

Letter dated November 8, 1973 from Counsel for Franklin Town Corp. to Counsel for Radio Broadcasting Co. A-38

APPENDIX (*continued*)

Page

Excerpts from Opinion of Takiff, J. entered July 24, 1974, in *In Re Condem. Proc.*, Philadelphia Common Pleas Court, April Term, 1973, No. 4488 ..... A-41

Order of Court of Common Pleas — Philadelphia County entered July 10, 1979, Kalish, J. ... A-54

Opinion and Order of Court of Common Pleas, Philadelphia County, entered August 16, 1979, Kalish, J. A-55

Findings of Fact, Conclusions of Law, Discussion and Order of the Court of Common Pleas, Philadelphia County, entered August 17, 1979, Kalish, J. A-58

Opinion and Order of the Commonwealth Court of Pennsylvania, entered December 5, 1980, Rogers, J. A-69

TABLE OF AUTHORITIES

Cases:	Page
Alexander v. U.S. Dept. of HUD, 441 U.S. 39 (1979)	11
Almota Farmers E. & W. Co. v. U.S., 409 U.S. 470 (1973)	9, 10, 14
Berman v. Parker, 348 U.S. 26 (1954)	8, 9, 12, 13, 14
Caramico v. HUD, 509 F.2d 694 (1974)	11
Cherry Press, Inc. v. Redevelopment Authority, 11 Com. Ct. 47, 312 A.2d 477 (1973)	9, 10
Dohany v. Rogers, 281 U.S. 362 (1929)	9
E. & E. Hauling, Inc. v. Forest Preserve District, 613 F.2d 695 (7th Cir., 1980)	15, 16
Fisher v. Pittsburgh Parking Authority, 433 Pa. 113, 248 A.2d 849 (1969)	9, 10
Goolsby v. Blumenthal, 597 F.2d 934 (1979)	17
Griggs v. Allegheny County, 369 U.S. 84 (1962)	18
Hindsley v. Township of Lower Merion, 25 Com. Ct. 455, 360 A.2d 297 (1976)	9, 10, 11
In re Condem. Proc., 19 Com. Ct. 272, 339 A.2d 885 (1975), cert. den., 423 U.S. 1018	8, 9
Kinstler v. Redev. Auth., Phila., 13 Com. Ct. 281, 320 A.2d 396 (1974)	14
Lathan v. Volpe, 455 F.2d 1111 (9th Cir. 1971)	11
Mahon v. Coal Cos., 260 U.S. 393 (1922)	18
Moorer v. H.U.D., 561 F.2d 175 (8th Cir. 1977)	11
Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974)	14

TABLE OF AUTHORITIES (*continued*)

Cases: Page

Whitman v. State Highway Commission of Missouri, 400 F.Supp. 1050 (1975) 17

Young v. Harris, 599 F.2d 870 (8th Cir. 1979) 11, 12

CONSTITUTIONAL PROVISIONS AND STATUTES

Page

Constitution, Article I, Section 10, Clause 1 . . 2, 15, 16

Constitution, Amendment V 2, 8, 9, 14, 17, 18

Constitution, Amendment XIV 2, 9, 14

Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C.A. §4601 (1970) 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, A-7

Pennsylvania Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, as amended. 35 P.S. 1701 . . . . . 13, 15

Pennsylvania Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, 1971. 26 P.S. 1-101, *et seq.* 2, 3, 4, 6, 9, 10, 12, 13, 14

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CITATIONS TO OPINIONS BELOW

The Opinion and Order of the Commonwealth Court of Pennsylvania affirming the Order of the Common Pleas Court of Pennsylvania is reported at 423 A2d 451 (1980) and is printed in Appendix to this Petition (A-69).

The Opinion and Order of the Court of Common Pleas of Philadelphia County entered August 16, 1979 dismissing Petitioner's Complaint in Assumpsit is unreported and is printed in Appendix of this Petition (A-55).

The Findings of Fact, Conclusions of Law, Discussion and Order of the Court of Common Pleas of Phila-

delphia County enterd August 17, 1979 dismissing Petitioner's Complaint pursuant to the Pennsylvania Eminent Domain Code is unreported and is printed in Appendix of this Petition (A-58).

JURISDICTION

The judgment of the Commonwealth Court of Pennsylvania was entered on December 5, 1980. A timely Petition for Allowance of Appeal from the Commonwealth Court decision was filed with the Supreme Court of Pennsylvania; said Petition was denied on June 30, 1981.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article I, Section 10, Clause:

> No state shall . . . pass any . . . law impairing the obligation of contracts.

United States Constitution, Amendment V:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.

§ 1—201. Definitions

(8) "Displaced person" means any condemnee or other person not illegally in occupancy of real property

who moves or moves his personal property as a result of the acquisition for a program or project of such real property, in whole or in part, or as the result of written notice from the acquiring agency of intent to acquire or order to vacate such real property; and solely for the purpose of subsections (a) and (b) (1) and (b) (4) of section 601—A, as a result of such acquisition or written notice of intent to acquire or order to vacate other real property on which such person conducts a business or farm operation. . . .

(11) "Program or project" means any program or project undertaken by or for an acquiring agency as to which it has the authority to exercise the power of eminent domain.

§ 1—601A. Moving and related expenses of displaced persons

(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property.

(1) Receipts therefor shall be prima facie evidence of incurred reasonable moving expenses.

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to any payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows:

(1) Actual direct losses with reference to personal property, but not to exceed the greater of (i) the reasonable expenses which would have been required to relocate such personal property, or (ii) the value in place of such personal property as cannot be moved without substantially destroying or diminishing its value, whether because of the unavailability of a comparable site for relocation or

otherwise, or without substantially destroying or diminishing its utiltiy in the relocated business or farm operation.

(4) In addition to damages under clauses (1) or (2) and (3) of this subsection, actual reasonable expenses incurred in searching for a replacement business or farm.

1964, Special Sess., June 22, P.L. 84, art. VI—A, § 601—A, added 1971, Dec. 29, P.L. 640, No. 169, § 8.

STATEMENT OF THE CASE

In 1971 the Redevelopment Authority of the City of Philadelphia and Franklin Town Corporation, a private profit-making corporation without the power of eminent domain, entered into a contract whereby the Redevelopment Authority would use its power of eminent domain to assemble land for a public project in downtown Philadelphia designated the "Franklin Town Urban Redevelopment Project" (FTUR Project). The purpose of the project was to improve the fifty acre area of residential and commercial blight according to a comprehensive urban plan.

Franklin Town Corporation contracted with the Redevelopment Authority to develop the area according to the comprehensive plan. The agreement called for Franklin Town Corporation to pay all acquisition and relocation costs for persons and businesses displaced by the project. The Franklin Town relocation standards and guarantees, as provided in Section 5 of the City Ordinance authorizing execution of the Redevelopment contract, were to equal or exceed the standards of the Federal Uniform Relocation Act of 1971 (A-19).

Radio Broadcasting Company (Petitioner) was a commercial tenant located within the Franklin Town Urban Redevelopment Project area, along the southern boundary, Vine Street. Radio Broadcasting Company's

electronics and other equipment at the Vine Street location was valued at over $550,000. (A-54).

Prior to the announcement of the Franklin Town Urban Redevelopment Project the Pennsylvania Highway Department had announced plans to widen Vine Street. If carried out the State plans called for the partial destruction of the building where Radio Broadcasting was located, with consequent destruction of Radio Broadcasting Company's electronics equipment. Anticipating highway development in 1971 Radio Broadcasting Company rented alternate space to move to when the need arose; but did nothing with the alternate space.

In January, 1973 the State Highway engineers inspected the Radio Broadcasting facility and told Radio Broadcasting that the Highway Department would revise the Vine Street Project borders so as to skirt the Radio Broadcasting offices and equipment, making it unnecessary for Radio Broadcasting Company to relocate on account of the proposed widening of Vine Street. (A-23).

Two weeks after the State Highway Department eliminated the Radio Broadcasting site from their plans, Franklin Town Corporation agreed to buy the building where Radio Broadcasting was located for $220,000.00, plus $65,000 additional to evict Radio Broadcasting Company. (A-24, 27). The entire property was insured for only $135,000.00. The cost of condemning Radio Broadcasting was over $500,000.00. (A-27, 54). The purchase was conditioned upon Radio Broadcasting Company's being evicted by the owner and was in lieu of condemnation of the premises by the Redevelopment Authority of the City of Philadelphia. (Trial Court's Finding of Fact No. 19) (A-60).

In the Summer of 1973 Redevelopment Authority relocation technicians and Franklin Town Corporation executives met at Radio Broadcasting's facility to discuss

the proposed move. (A-29, 31, 32). Radio Broadcasting decided to build replacement electronics equipment at its alternate location, then abandon the equipment located at the Vine Street location as the equipment was too delicate to be moved. (A-32). This was ultimately done and in January, 1974 Radio Broadcasting Company moved to its new location, suffering the loss of virtually all of the equipment at the Vine Street location. (A-61).

In January, 1974 the Redevelopment Authority of the City rejected the relocation expense claim of Radio Broadcasting ("Jan. 7 74 - Meeting held - In attendance - Malmed, Altimari, Fina, Reed, Klein, Best & Gallagher - We were told to *drop out of the picture on this case.*") (A-32). Redevelopment Authority officials were instructed by Franklin Town Corporation not to deal with Radio Broadcasting and the Redevelopment Authority complied with the corporate developer's request.

Radio Broadcasting began legal proceedings to recover its relocation expenses from the Redevelopment Authority, Franklin Town Corporation and the State Highway Department. Shortly prior to the hearing the State Highway Department agreed to pay Radio Broadcasting for those relocation costs caused by the Highway Department up to the time it changed its mind in January, 1973; this left the bulk of the relocation expense claim (over $550,000 for dismantled machinery, equipment and fixtures) for the costs and abandoned machinery losses incurred between January, 1973 and January, 1974 to be paid by the Municipal Redevelopment Authority and the corporate redeveloper, Franklin Town.

Radio Broadcasting Company filed two actions. The first was an eminent domain proceeding claiming that it was a "displaced person" under the Pennsylvania Eminent Domain Code. The definition of a "displaced person" in the Pennsylvania Eminent Domain Code tracks that of the Federal Uniform Relocation Assistance and

Real Property Acquisition Policies Act of 1970; the pertinent portions of the state statute are a paraphrase of the Federal statute. (A-76). The second lawsuit was in contract, on the theory that Radio Broadcasting was the third party beneficiary of those portions of the redevelopment contract between the Redevelopment Authority and the Franklin Town Corporation wherein the corporate developer agreed to pay relocation expenses to displaced persons and businesses according to the standards and guarantees set forth in the Federal Uniform Relocation Act. (A-19).

The contract theory lawsuit was consolidated for hearing with the eminent domain action and was summarily dismissed, the Court holding that where there was a condemnation, or an acquisition in lieu of condemnation as here, the claimant's exclusive remedy was a proceeding under the Eminent Domain Code. (A-55, 71).

In the eminent domain case the trial court found that the Franklin Town Urban Redevelopment Project was a comprehensive plan for public purposes, and that the government had enlisted private enterprise to carry out the plan according to the *Berman vs. Parker* format; the Court further found that the acquisition of Radio Broadcasting's leasehold premises was in lieu of condemnation by the municipal authorities. The Court then decided that Radio Broadcasting was not a "displaced person", as that term is defined by the language of both the Federal and Pennsylvania statutes because (a) the municipal redevelopment authority is not liable for project acquisitions in lieu of condemnation by the corporate redeveloper, and (b) the private redeveloper does not have the power of eminent domain and is therefore not liable for moving and dislocation damages. Accordingly, since there was no liable defendant, the Court found that Radio Broadcasting did not fit the statutory definition of "displaced person".

On appeal the Commonwealth Court of Pennsylvania adopted the trial court's reason in both cases, and affirmed the dismissal of Radio Broadcasting's claims; the Commonwealth Court also said that the Federal Constitutional question had been considered and found to be without merit. Radio Broadcasting Company requested review by the Supreme Court of Pennsylvania, but this was denied.

REASONS FOR GRANTING THE WRIT

1. The decision below denies Petitioner Radio Broadcasting Co. its fundamental Constitutional right to "Just Compensation" for machinery destroyed to make way for a Municipal Redevelopment Project.

The fundamental right at issue is a commercial tenant's entitlement to Article V "just compensation" for on-site machinery, equipment and fixtures which were reduced to scrap by reason of the acquisition of the leasehold and the tenant's subsequent eviction to make way for an urban redevelopment project.

The Franklin Town Urban Redevelopment Project (FTUR project) was formulated and carried out according to the *Berman v. Parker*, 348 U.S. 26 (1954) format. A large area of downtown Philadelphia was declared blighted by the City Planning Commission and local ordinances were passed enabling the City Redevelopment Authority to contract with a private redeveloper to develop the project area; the City was to provide eminent domain and technical services as provided in the Urban Redevelopment Law. *In re Condem. Proc.*, 19 Com. Ct. 272, 339 A.2d 885 (1975), *cert. den.*, 423 U.S. 1018. In addition, the redeveloper contracted to pay acquisition costs and relocation expenses according to the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C.A. §4600 (1970) (URA) standard. (A-7).

Although the FTUR project was challenged as a private as opposed to public undertaking, the project withstood court tests, including a Petition for Certiorari to this Court. *In re Condem. Proc., supra.*

The significant departure from the *Berman vs. Parker, supra,* format in our case is that both the lower Court and the Commonwealth Court violated Radio Broadcasting's fundamental constitutional right to Article V "just compensation" for its machinery and equipment loss. See *Dohany vs. Rogers,* 281 U.S. 362 at 366 (1929) where it was held that the Article V rights to "just compensation" are guaranteed by the 14th Amendment in state action cases.

In this case the Pennsylvania courts completely ignored the rule of *Almota Farmers E. & W. Co. vs. U. S.,* 409 U.S. 470 (1973). How the Pennsylvania courts achieved this unusual result is a study in reverse logic.

Despite findings that the acquisition of the petitioner's leasehold was "in lieu of condemnation" by the private developer, and that the project was clearly for a public purpose, the Pennsylvania courts adopted a line of reasoning which approached the issue of petitioner's compensation backwards. It was held that petitioner was not a "displaced person" because neither the governmental authority nor the private developer was liable to compensate it for its machinery and equipment losses. (A-61).

Pennsylvania case law prior to 1971 (the year of the Federal URA and the Amendments to the Pennsylvania Eminent Domain Code) indicated that when a public authority purchased property for any purpose, then evicted the tenants at the termination of their leases, there was no compensable damage. *Fisher vs. Pittsburgh Parking Authority,* 433 Pa. 113 (1969), 248 A.2d 849; *Cherry Press, Inc. vs. Redevelopment Authority,* 11 Com. Ct. 47 (1973), 312 A.2d 477; *Hindsley vs. Twp. of*

Lower Merion, 25 Com. Ct. 455 (1976), 360 A.2d 297. Although only one of the cases may have involved a machinery and equipment loss *(Cherry,)* and the other two are ambiguous on the machinery and equipment loss point (the *Hindsley* case being explainable on other grounds), the principle is frequently cited in Pennsylvania case law. The only unambiguous case *(Fisher)* seemed to focus more on the leasehold termination as identical to what would happen had there been no "taking" than the fact that there may have been a compensable machinery and equipment loss, as opposed to a moving expense, or business dislocation (loss of profit) loss. In any event, the *Fisher* and *Cherry* opinions are at variance the opinion of this court in *Almota Farmers, supra*. Insofar as a public project acquisition has the same legal effect as condemnation when machinery and equipment is lost, then both the *Fisher* and *Cherry* cases have been overruled by *Almota Farmers, supra*. As our case shows, Pennsylvania courts totally ignore this vital legal precedent.

Both *Fisher* and *Cherry* arose before Pennsylvania amended its Eminent Domain Code to allow dislocation damages to "displaced persons", adopting the URA language. Act of June 22, 1964, P.L. 84, Art. II, §201, as amended 17, 1971. 26 P.S. 1-101, *et seq*. The only significant difference between the URA provisions and the Pennsylvania Dislocation Damages Amendments, *supra*, is that the Federal legislation allows the lower of 1) moving expenses, or 2) value in place as damages (A-7); the Pennsylvania Code allows the higher, 26 P.S. §1-601A(b)(1). This is a point that is more relevant to the contract aspect of this case *infra*. Although the Dislocation Damages Amendments purported to legislatively overrule *Fisher* and *Cherry, supra*, a Pennsylvania decision since the passage of the amendments relies on both *Fisher* and *Cherry*. *Hindsley vs. Lower Merion Twp.*, 25. Com. Ct. 455 (1976). *Hindsley, supra* was

cited by the Commonwealth Court in our case. (A-78); the trial court recognized the limitations of *Hindsley* and distinguished it. (A-62, 63).

Insofar as *Hindsley, supra,* is authority for the principle that a tenant's property may be reduced to scrap in eviction proceedings for a public project, it marks the beginning of the refusal by Pennsylvania Courts to accord commercial tenants the constitutional rights afforded other "displaced persons", and may mark the beginning of a major departure from constitutional guidelines, at least in non-assisted cases like ours.

The Pennsylvania trial and appellate court were cited to all of the Federal "displaced person" cases; they misinterpreted all of them.

They considered the most recent Federal decisions under the URA when deciding our case. *Moorer vs. HUD,* 561 F.2d 175 (8th Cir. 1977); *Lathan vs. Volpe,* 455 F.2d 1111 (9th Cir. 1971) interpreting identical language under the Federal Highway Act; *Caramico vs. HUD,* 509 F.2d 694 (1974); *Alexander vs. Dept. of HUD,* 441 U.S. 39 (1979); *Young vs. Harris,* 599 F.2d 870 (8th Cir. 1979). Considering the acknowledged identical language and format in the URA and the Pennsylvania Eminent Domain Code, both the lower and the Commonwealth Court should have been guided by Federal precedent in interpreting the statutory language. However, they made fundamental errors in interpretation when they failed to recognize the important distinction in the Federal cases between acquisitions which are the result of default mortgage foreclosures *(Young vs. Harris, supra, Caramico vs. HUD, supra; Alexander vs. U.S. Dept. of HUD, supra),* and acquisitions which are for a new public project where the compulsive power of eminent domain is the dislocating factor. *Lathan vs. Volpe, supra.* The compulsive power of eminent domain makes the difference. However, the lower court made an untenable generalization: "The U.R.A. is so structured that

a *private developer* has no liability for displacement benefits." (A-66).

Further, the lower Court said:

> "They (tenants in *Young vs. Harris*) were not entitled to benefits because private developer is excluded from coverage of the U.R.A." (A-65).

The basic error made by the Pennsylvania Courts was to examine the Federal cases and conclude, as a general rule, that where a private developer is involved, there is no liability for property taken. In short, if *Berman vs. Parker, supra* had been a Pennsylvania case there would have been no compensation paid for property taken where the private redeveloper bought realty in lieu of condemnation.

In our case the compulsive power of eminent domain was the most important factor, the trial court finding that the acquisition was "in lieu of condemnation". (A-60). Both courts failed to distinguish between new projects and mortgage foreclosures in the federal URA cases; they drew the conclusion that whenever private redevelopers funded any project (public or not), they had no liability for displacement damages.

Therefore, the Pennsylvania Courts ruled that under the State Eminent Domain Code, where a private developer acquires property for a municipal redevelopment project the private developer is not liable for damages arising from any dislocation caused by the project; the Municipal Redevelopment Authority is not liable because it did not make the acquisition. (A-61).

Thus, according to the holding in our case, where there is no entity liable for "just compensation" there is no "displacement" and no "taking".

Our judicial procedure traditionally requires Courts to first look to see if a wrong occurred which requires judicial recognition. Then, after recognizing the wrong,

our courts seek to identify a legally liable party, and the appropriate remedy. Simply stated, where there is a right, there ought to be a remedy. In our case the courts wrongly held that since Radio Broadcasting had no remedy, it had no rights.

The Commonwealth Court made untrue assumptions of fact. (A-75, 29-37). The lower Court did not find the "assumed" events as facts because they did not occur. (A-58).

The Pennsylvania courts also rejected the argument that the private redeveloper and the municipal authority were engaged in a joint undertaking. The Courts erroneously concluded as a matter of law that the two entities' activities were not intertwined. (A-67, 79). Thus, the Courts said there was no "*de facto* condemnation", or no "taking". Speaking plainly the Pennsylvania Courts elected to completely ignore the redevelopment contract and the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, amended June 23, 1978, P.L. 556, 35 P.S. 1701 *et seq.*

This kind of reasoning is clearly at odds with Federal decisions interpreting URA language identical to that of the Pennsylvania statute. It is a clear denial of the Constitutional right guaranteed in *Berman vs. Parker, supra*:

> "The right of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking."

In our case the *Berman vs. Parker, supra*, format was followed, except that Radio Broadcasting Co.'s Amendment V right to "just compensation" was denied.

As a matter of reasoning the primary fault in the opinions of the Pennsylvania courts in our case is that they defined the issue of "displacement" backwards.

They ignored fact issues of eligibility, but concentrated instead on who might be liable parties. Failing to find liable parties, both State courts concluded that no compensable loss was suffered. (A-61, 79). The Court then compounded their error by ignoring two Constitutions, plain statutory language, and the compulsive element of eminent domain. They reasoned as if this were a private transaction between individuals in the free market, neither being compelled to sell or buy. In point of fact, the transaction was blatant "taking" for a public project, and the onus of loss fell upon Radio Broadcasting Co., who is not supposed to bear the loss.

To add further to the confusion, this same Pennsylvania Court, the Commonwealth Court, previously said that a commercial tenant in this project, the FTUR Project, was a "displaced person" once he moved:

> "There can be no question that a tenant, such as Kinstler, under the provisions of Section 201(8) of the Code [the "displaced person" section at issue here] . . . may file a petition for appointment of a Board of View. . . . *Kinstler vs. Redev. Auth.*, Phila., 13 Com. Ct. 281 (1974), 320 A.2d 396.

This statement and the decision in our case cannot be reconciled.

The result in our case violates the principles laid down in *Almota, supra*, and the *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974). It contravenes the compensation guarantee articulated by Mr. Justice Douglas when the Supreme Court approved the partnership of municipal authority and private enterprise for public redevelopment. *Berman vs. Parker, supra.*

Radio Broadcasting Co. was a tenant whose leasehold was ended for a public project. Its machinery, equipment and fixtures were destroyed in the "take" and it was never compensated.

2. By summarily dismissing the Third-Party Contract Beneficiary Lawsuit the State Court denied Radio Broadcasting Co.'s Constitutional Article I, Section 10, Clause 1 Right Against Impairment of its Contractual Rights by State Action.

In virtually all modern redevelopment plans the contract between the redeveloper and the governmental authority is the keystone legal document. In Pennsylvania the Urban Redevelopment Law sets forth what matters must be covered in the redevelopment agreement. Act of May 24, 1945, P.L. 991, amended by Act of June 23, 1978, P.L. 556, 35 P.S. 1701 *et seq.* § 1711. The government agency may allow a private developer certain privileges and licenses in exchange for the developer's performing certain quasi-governmental activities. *E & E Hauling, Inc. vs. Forest Perserve Dist.*, 613 F.2d 695 (7th Cir., 1980).

In our case the corporate redeveloper pursuant to the Urban Redevelopment Law entered into a Redevelopment Contract whereby the private redeveloper agreed to pay all the costs of the project:

> Franklin Town accepts the standards and philosophy of the new Federal Uniform Relocation Act as the foundation of its relocation assistance program. In addition, Franklin Town will exceed the Federal standards as they may be administratively interpreted in the specific instances noted below: (A-19).
>
> Business Concerns
>
> Franklin Town adopts the Federal standard covering all relocation payments for business concerns. These payments cover actual moving expenses, loss of personal property, . . . (A-22).

When the legality of the Franklin Town project undertaking was tested, the Pennsylvania courts noted that

"the Franklin Town relocation standards and guarantees, as provided under Section 5 of the Ordinance [authorizing the governmental redevelopment authority to execute the redevelopment contract with the private redeveloper], equal or exceed the standards of the Federal Uniform Relocation Act of 1971." (A-52, 53).

The local enabling legislation likewise contained this provision. *In Re Condem. Proc.*, 19 Com. Ct. 272, 339 A.2d 885 (1975).

In our case the trial court summarily dismissed the contract action as duplicative of the Eminent Domain lawsuit, although in fact it is not. In so doing it deprived Radio Broadcasting Co. of its contract remedy and ran afoul of the Constitutional Article I, Section 10, Clause 1 proscription. *E & E Hauling, Inc. vs. Forest Preserve District, supra.*

After dismissing Radio Broadcasting Co.'s contract action, the trial court then misconstrued the State Eminent Domain Code to deny petitioner any damages. See Reasons For Granting Certiorari Question One herein.

Considering the numbers of redevelopment programs in housing, highway improvements and environmental preservation, and the number of persons who may be uprooted without remedy or recompense, the decision in our case will have a significant impact on the rights of Americans.

3. The Decision Below may Adversely Affect Federal "Assisted" Projects Because States may Contribute Real Estate or Realty Interests Acquired Without Payment of "Just Compensation".

If allowed to stand, the decision in our case could allow states to participate in Federally assisted projects without complying with URA guidelines on relocation assistance. The result would be the construction of a project and the displacement of persons and businesses

without any compensation, which is contrary to the intention of Congress in passing the URA, and violates Amendment V of the Federal Constitution.

Local governments have already attempted to contribute lands and real estate interests to Federally assisted projects without paying proper compensation under the URA. *Whitman vs. State Highway Commission of Missouri,* 400 F.Supp. 1050 (1975). Depending upon the contribution of the Federal government, it may be important to the local governmental unit to lower its acquisition costs in order to build the entire project within budget projections.

In the modern scheme, projects involving state and federal cooperation can be very complicated. There is some precedent for the principle that if the federal money is not specifically allocated for the portion of the project from which the complaining parties are displaced, then they have no grounds for complaint. *Cf. Goolsby vs. Blumenthal,* 597 F.2d 934 (1979).

Frequently government benefits from the delays between announcement of a proposed project and the actual acquisition of the realty interests. In the intervening time tenants and others holding otherwise compensable interests may find their best interests served by moving rather than waiting for condemnation. The taking authority benefits because the value of a dilapidated, unoccupied building is obviously less than that of an occupied, well-maintained building and there is no relocation expense with an empty building. Where it requires the combined efforts of local government, the state highway authority, and the federal government to assemble land for a project, it is reasonable to expect that the state and local governments will seek to reduce their relocation expenses.

This problem appears particularly acute in states like Pennsylvania where the local government or its cor-

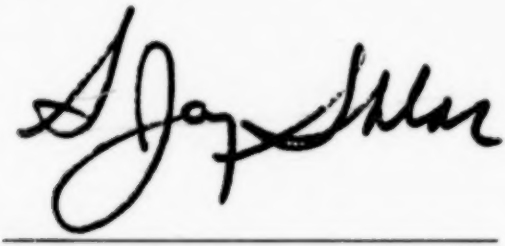
porate redeveloper could acquire land surreptitiously for an unannounced public project, evict tenants at little cost, and then contribute the unoccupied real estate to the project. This speculation is not farfetched. In the Franklin Town Urban Redevelopment Project the private corporate redeveloper originally owned 20 acres out of the project's 50 acres. The Franklin Town project boundaries were drawn to exclude one land acquisition which would have been very costly. See unpublished opinion of Takiff, J., C.P. Phila., April Term, 1973, No. 4488, dated July 24, 1974, (A-48). In the Franklin Town Urban Redevelopment Project the corporate developer steadily bought up properties before the public announcement, and presumably never paid any relocation costs. Had the FTUR project been Federally-assisted in its later stages, the purpose and mandate of the URA would have been subverted by the surreptitious acquisition of land prior to a public announcement.

The holding of our case is at odds with the intent of Federal legislation. Real estate interests acquired without "just compensation" might be contributed to a Federal project and the uniform policy which the URA was intended to implement would not be applied. The Courts of Pennsylvania are out of step with the spirit of the times in failing to implement URA principles. As in *Mahon vs. Coal Cos.*, 260 U.S. 393 (1922) and *Griggs vs. Allegheny County*, 369 U.S. 84 (1962) the Pennsylvania courts have denied fundamental Amendment V rights to "just compensation" for a governmental taking. Lest one think that the present situation is limited, consider the multitude of commercial tenants in America's cities; half the businesses in the nation are small businesses, and it is safe to assume that a substantial number of these are tenants, not landlords. The problem of condemnation rights for those displaced is a large one; private redevelopers and local government always seek economy in acquisition and relocation costs. Thus, any decision in our case will have a far-reaching effect.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the Commonwealth Court of Pennsylvania.

Respectfully submitted,



S. JAY SKLAR
C. GEORGE MILNER
Suite 1229
Public Ledger Building
Philadelphia, PA. 19106
(215) 922-1550

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 1981, three copies of the Petition for Writ of Certiorari were mailed by first class mail, postage prepaid to William T. Steerman, Esq., 1920 Two Penn Center Plaza, 15th and J. F. Kennedy Boulevard, Philadelphia, Pennsylvania 19102, Special Counsel for Respondent Redevelopment Authority of the City of Philadelphia, Peter A. Galante, Esq., 1234 Market Street, Philadelphia, Pennsylvania 19107, General Counsel for Respondent Redevelopment Authority of the City of Philadelphia, and Tyson W. Coughlin, Esq., Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street, Philadelphia, Pennsylvania 19103, attorney for Respondent Franklin Town Corporation; I further certify that all parties required to be served have been served.

S. JAY SKLAR

Appendix

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CONDEMNATION OF 1711-13 Vine Street, Philadelphia, Pa. 19103 by Commonwealth of Pennsylvania; Redevelopment Authority of the City of Philadelphia; and Franklin Town Corporation	:	FEBRUARY TERM, 1978
	:	NO. 3985
	:	

CHRONOLOGY OF SIGNIFICANT EVENTS

July 1, 1960

Radio Broadcasting Corporation enters into three (3) year lease with Al Glassberg for 2nd Floor and roof of 1711-13 Vine Street. After the first term, the lease renews annually.

November, 1969

Franklin Town Joint Venture hires Jason Nathan who begins planning operations for the Franklin Town Urban Redevelopment Area. These operations were unpublicized until June 3, 1971, although Franklin Town acquired over a dozen properties through third parties in the Redevelopment Area before the public announcement in June, 1971.

1969-1970

PennDot announces plans for acquisition of Vine Street frontage (in connection with proposed Vine Street widening) which would have destroyed critical Radio Broadcasting equipment in strip-taking.

Early 1970

Representatives of PennDot call upon William Gross and advise of intent to take front 10′ of building.

1970-Early 1971

Radio Broadcasting Corporation locates newer space which was 600 square feet larger at River Park House and signs a five (5) year lease beginning June 1, 1971.

Prior to June, 1971

Franklin Town executives knew that PennDot proposed taking a strip of the properties on the north side of the 1700 block of Vine Street for the proposed Vine Street widening.

June 3, 1971

Franklin Town makes a public announcement of its project to be known as the FTURA, which area includes 1711-13 Vine Street.

June 16, 1971

Redevelopment Authority and Franklin Town execute the so-called "assistance agreement". In Paragraph 4 Franklin Town Corporation agrees to pay "relocation payments to displaced occupants. . . ." The bond of Franklin Town Corporation was agreed to be twice the estimated acquisition costs including the estimated machinery and equipment, plus the total estimated costs for commercial and residential relocation payments.

July to December 1971

Messrs. Nathan, McShane and van de Velde estimate a projected relocation cost expenditure of $1.4 million for the Franklin Town Urban Redevelopment project, which includes relocation expenses for the entire north side of Vine Street from 17th Street to 18th Street.

July 12, 1971

Redevelopment Authority sends owner, Al Glassberg, of 1711-13 Vine Street, Notice of Visitation by appraisers to establish value on the property

which is proposed to be acquired in the future by the Redevelopment Authority for the FTURA.

July 22, 1971

Owner of Radio Broadcasting Corporation is called upon by Redevelopment Authority relocation agent; advises of the moving expense claim.

August 1-8, 1971

Jason Nathan drafted "Franklin Town Relocation Standards and Guarantees" which was reviewed by Messrs. McShane and van de Velde.

June 16, 1972

Radio Broadcasting Corporation notifies PennDot of the claim for moving and similar expenses.

October 24, 1972

PennDot files Declaration of Taking for a critical portion of the subject property.

December 15, 1972

Redevelopment Authority and Franklin Town enter into a "Redevelopment Contract."

January 18, 1973

After viewing the Radio Broadcasting Corporation premises, PennDot notifies Radio Broadcasting Corporation that it will eliminate the take at 1711-13 Vine Street.

February 9, 1973

Franklin Town executed an Agreement of Sale with the owner of 1711-13 Vine Street, acknowledging the tenancy of Radio Broadcasting Corporation, and placing the burden of evicting Radio Broadcasting Corporation to the Seller; Settlement to be held on July 2, 1973.

February 19, 1973

Owner notified Radio Broadcasting Corporation that its lease would terminate at the end of the current term, June 30, 1973.

March 15, 1973

Redevelopment Authority relocation technician makes a call on Radio Broadcasting Corporation at 1711-13 Vine Street, leaves handbooks, etc.

April 26, 1973

Declaration of Taking for Franklin Town Urban Redevelopment Project filed; it did not include either the north or south sides of Vine Street.

May 29, 1973

Franklin Town settles with Owner for 1711-13 Vine Street. Escrows $70,000 of proceeds to secure vacancy at the end of the Radio Broadcasting Corporation lease in June, 1973.

June 12, 1973

Redevelopment Authority relocation technicians visit Radio Broadcasting Corporation's offices regarding the requirements and nature of Radio Broadcasting Corporation's move. These meetings are between Radio Broadcasting Corporation's experts and attorneys and Redevelopment Authority's relocation technician and supervisor. By October 26, 1973 Redevelopment Authority takes position that the move will have to be negotiated by C. van de Velde, Vice President (relocation) for Franklin Town.

June 26, 1973

Redevelopment Authority writes to Radio Broadcasting Corporation offering assistance in the relocation and requesting data for the move.

July 9, 1973

Radio Broadcasting Corporation, through counsel, sends letter indicating final move planned for September 30 and asserting a claim for economic losses.

November 8, 1973

Franklin Town corresponds with counsel for Radio Broadcasting Corporation to advise that Radio Broadcasting Corporation must vacate premises by November 30, 1973. Franklin Town requires the former owner to pursue aggressively Radio Broadcasting Corporation's complete vacation of the premises.

November 28, 1973

By letter Franklin Town and the owner agree to extend the owner's occupancy to December 31, 1973. Agreement for daily penal damages if the property is not vacant at the end of 1973.

January 7, 1974

At a Redevelopment Authority meeting Legal Director for Redevelopment Authority states to Authority personnel that the Authority would have nothing more to do with Radio Broadcasting Corporation.

January 31, 1974

Radio Broadcasting Corporation vacated 1711-13 Vine Street.

February 5, 1974

Franklin Town withheld $3,600 from Glassberg's distribution. Glassberg charged Radio Broadcasting Corporation $3,864.

April 24, 1974

PennDot requests Franklin Town to agree to its request to file a Declaration of Relinquishment. Franklin Town refuses.

May, 1974 and June, 1974

Redevelopment Authority filed Declarations of Taking for properties on the north and south sides of Vine Street not previously acquired.

Spring, 1976

1711-13 Vine Street, which had stood vacant for over two years, pending resolution of litigation, was demolished by Franklin Town Corporation.

September 10, 1976

Radio Broadcasting counsel asked if Franklin Town and Redevelopment Authority would acknowledge liability for moving expenses, and accept claim for moving expenses.

October 1, 1976

Counsel for Franklin Town responds by stating that counsel for Redevelopment Authority says there is no substantive liability, and the Franklin Town lawyer concurs.

GENERAL PROVISIONS

§4601. Definitions

As used in this Act [42 USCS §§4601 et seq.]—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act [enacted Jan. 2, 1971], moves from real property, or moves his personal property from real property, as a result of the

acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title [42 USCS §§4622(a), (b), 4625], as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title [42 USCS §4622(a)], for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or

the unpaid purchase price of, real property, under the laws of the States in which the real property is located, together with the credit instruments, if any, secured thereby.

Jan. 2, 1971 P.L. 91-646, Title I, §101, 84 Stat. 1894.)

§4622. Moving and related expenses

(a) General provision. Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act [enacted Jan. 2, 1971], the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and
(3) actual reasonable expenses in searching for a replacement business or farm.

REDEVELOPMENT CONTRACT
BETWEEN
FRANKLIN TOWN CORPORATION
PENNSYLVANIA CORPORATION
AND
REDEVELOPMENT AUTHORITY OF THE
CITY OF PHILADELPHIA
FOR
CENTER CITY REDEVELOPMENT AREA
FRANKLIN TOWN PROJECT

THIS AGREEMENT, entered into as of this 15th day of December A.D., 1972, by and between the REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA, hereinafter called the "AUTHORITY," and FRANKLIN TOWN CORPORATION a Pennsylvania Corporation, hereinafter called the "Redeveloper"

WITNESSETH THAT:

WHEREAS, the AUTHORITY certifies that it is a public body and a body corporate and politic duly created and organized pursuant to and in accordance with the provisions of the Urban Redevelopment Law of May 24, 1945, P.L. 991, and laws supplemental thereto; and that it is duly authorized to purchase and acquire land, to exercise the right of eminent domain, to clear buildings thereon, and to convey to others and to enter into agreements with others for the purpose of redevelopment of said land and buildings, the elimination of blighted areas, and areas which are inadequately planned, and to eliminate excessive land coverage, or the lack of proper light, air and open space, to eliminate defective design and erection of buildings or faulty street or lot layout, or economically or socially undesirable land uses, and in connection therewith to take all such action as is provided for herein; and

WHEREAS, the City Planning Commission, in conformity with the provisions of the Urban Redevelopment Law, on January 8, 1963, certified as a Redevelopment Area that portion of the City described as the Center City Redevelopment Area; and

WHEREAS, the City Planning Commission has completed and approved a detailed Redevelopment Area plan dated December, 1967, and amended July, 1971, for the redevelopment of the Center City Redevelopment Area, making recommendations for land uses, standards of population densities, land coverage, zoning changes, street layout and street changes, and other details as therein set forth; and

WHEREAS, the AUTHORITY has prepared a detailed plan, hereinafter called the Redevelopment Proposal dated July, 1971, for a portion of the Center City Redevelopment Area known as Franklin Town of which the hereinafter referred to premises is a part; and

WHEREAS, the REDEVELOPER certifies that it is authorized to enter into this Agreement and undertakings herein provided and to acquire real estate for the purpose hereinafter described; and

WHEREAS, it is the purpose of this Agreement to eliminate the blighted area and develop thereon buildings, commercial, residential and public development, and other improvements to increase the land values in the Project Area by eliminating economically and socially undesirable land uses for the promotion of the health, safety, convenience and welfare of the citizens of Philadelphia; and

WHEREAS, the *AUTHORITY* has *acquired title or shall acquire title to portions of the area known as Center City Redevelopment Area, Franklin Town Project,* hereinafter called the "Project Area"; and

NOW, THEREFORE, the parties hereto, each of which intends to be legally bound hereby, in consider-

ation of these premises and mutual undertakings, agree as follows:

1. The Project Area covered by this Agreement is ALL THAT CERTAIN PROPERTY in the 8th Ward of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania, described in Exhibit "A", attached hereto and made a part hereof.

2. *The AUTHORITY agrees to acquire good and marketable title to all those portions of the Project Area designated for acquisition in the Redevelopment Proposal dated July 16, 1971,* as designated in Exhibit "B", attached hereto and made a part hereof, within 12 months of the date of this Agreement, this Title to be such as will be insured by any reputable title insurance company in the City of Philadelphia at regular rates, and thereafter convey said title subject to the terms and conditions of this Agreement, to the REDEVELOPER or to one or more nominees of the REDEVELOPER. All real estate, transfer, and documentary taxes payable by the AUTHORITY by law shall be borne by the REDEVELOPER.

3. "The AUTHORITY and the REDEVELOPER mutually agree, in order to expedite the purposes of this Agreement, that transfer of title may be made to successive portions of the Project Area, such *portions to be free of all site occupants,* and to comprise acceptable development parcels as agreed upon by the AUTHORITY and the REDEVELOPER. In determining acceptable development parcels, the AUTHORITY and the REDEVELOPER shall give weight to the needs of the REDEVELOPER in the overall project development schedule. The total acreage to be conveyed under this Agreement is 10 acres, more or less. The

REDEVELOPER or its nominee agrees to take title to at least four acres of the Project Area within twelve months after condemnation of the Project Area by the Redevelopment Authority, and thereafter, take title to at least one acre in each of the six succeeding twelve-month periods, provided, however, that all 10 acres of the Project Area must be transferred to the REDEVELOPER within eighty-four (84) months of the date of condemnation.

"If the AUTHORITY is unable to convey good and marketable and insurable title to any mutually agreeable disposition parcel within twelve (12) months from the date of written notice from the REDEVELOPER of intention to take title to such parcel, the REDEVELOPER, or its nominee or nominees, shall, within sixty days thereafter, have the option of taking such title as AUTHORITY may give, or extending such time by mutual agreement or terminating this Agreement. If the REDEVELOPER or its nominee fails to exercise such options within the given time, this Agreement shall be automatically terminated." It is agreed that any loss or damage to the Project Area, or any improvement thereon, which may occur between the time of this Agreement and the time of conveyance of title to the REDEVELOPER as a result of fire, or other casualty, shall in no way affect, void or impair any provisions of the Agreement. The REDEVELOPER, however, shall have the right to insure against such loss or damage and to receive the full amount of such insurance.

It is agreed between the AUTHORITY and the REDEVELOPER that their mutual objectives are to assure total redevelopment within the specified time while at the same time carry out a carefully staged relocation-demolition-conveyance program designed to minimize the impact of sudden

relocation and avoid massive demolition that results in large vacant undeveloped areas.

4. The work to be performed by the REDEVELOPER under this Agreement shall be commenced within twelve (12) calendar months following conveyance of each disposition parcel, and shall be completed in an expeditious manner, consistent with completion of all work in the Project Area within one hundred and twenty (120) calendar months after commencement of work on the first parcel.

The terms of this paragraph may be extended upon written request from the REDEVELOPER and subject to approval by the AUTHORITY. The REDEVELOPER shall not be deemed in default on account of any failure in performance due to unforeseeable causes beyond control of and without the fault or negligence of said REDEVELOPER, including but not restricted to acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, picketing, riots, civil commotion, freight embargoes, shortages of material, or acts of the Federal, State or City Governments, or any of their agencies, or delays of subcontractors due to any such causes.

5. The AUTHORITY shall have the right to approve any nominee chosen by the REDEVELOPER. The REDEVELOPER shall submit financial qualifications for any proposed nominees to the AUTHORITY, and the AUTHORITY shall approve or reject such nominee within thirty (30) days of submission of this information. Failure by the AUTHORITY to give the REDEVELOPER a written approval or rejection of its nominee within this 30-day period shall constitute the AUTHORITY'S approval.

6. "The REDEVELOPER, prior to conveyance of each disposition parcel, shall submit to the AUTHORITY a security completion deposit, either in cash, acceptable letter of credit or other acceptable security, equal to 5% of the land value of that parcel, such value to be determined by the acquisition appraisals for that parcel. This deposit shall be refunded to the REDEVELOPER after the AUTHORITY certifies completion of development of that parcel.

7. The REDEVELOPER shall make payment in lieu of taxes to the City of Philadelphia on all property in the Project Area acquired by the AUTHORITY, beginning with the calendar year immediately following the date of condemnation. The amount of this payment shall be based on the annual real estate taxes on such properties in the Project Area as of the date of this contract. Such payments in lieu of taxes shall continue to be paid by the REDEVELOPER for so long as the AUTHORITY holds title to such properties.

The first annual payment in lieu of taxes shall be reduced by twenty-five thousand ($25,000.00) dollars, provided the REDEVELOPER deposits such amount in an interest-earning escrow account with a bank approved by the AUTHORITY.

The escrow fund shall be used under rules established by the Authority, to assist in defraying unreimbursed real estate tax increases as may be incurred by single family homeowner-occupants in the project area who are relocated into replacement homes and who, at the time of relocation, would qualify for assistance under the Pennsylvania Senior Citizens Property Tax Assistance Act. Such assistance shall be available to the present single family homeowner occupants so long as they own and

occupy and pay taxes on relocation homes, and shall not inure to the benefit of heirs, assigns, lessees, or grantees. Assistance shall be rendered hereunder for ten years from the date of establishment of the fund unless, prior to the expiration of the ten-year period, there are no remaining persons eligible for assistance or the fund is exhausted, and neither the Authority nor the Redeveloper shall be under any obligation to replenish or renew the fund. Any balance remaining in the fund at the time of termination shall be turned over to the City's general fund.

8. To secure the obligation of the REDEVELOPER to pay costs incurred under this Agreement pursuant to the Pennsylvania Eminent Domain Code, the REDEVELOPER agrees to deposit with the AUTHORITY, prior to the AUTHORITY'S execution of this Agreement, a bond or bonds with corporate surety, in form reasonably satisfactory to the AUTHORITY, suitable for filing with the Court with a Declaration of Taking in an amount agreed upon by the REDEVELOPER and the AUTHORITY. The amount of the bond to be sufficient to cover and based upon the following elements of damage in the Pennsylvania Eminent Domain Code: twice the estimated acquistion costs of property to be acquired by the AUTHORITY including the estimated amount of machinery and equipment damages for such properties, plus the total estimated costs for commercial and residential relocation payments and damages for loss of patronage relating to such properties.

9. The REDEVELOPER has established a goal of providing 20% of the residential units for publicly assisted low or moderate income housing, and on its part the AUTHORITY undertakes to assist and cooperate with the REDEVELOPER in obtaining the public approvals and assistance necessary to develop such units.

10. The REDEVELOPER has agreed to provide displaced families and businesses with relocation assistance as described in the *Franklin Town Relocation Standards and Guarantees,* marked as Exhibit "D", attached hereto and made a part hereof; further, the REDEVELOPER shall provide exchange replacement homes on a site or sites selected by the REDEVELOPER within the project boundaries for as many of the single family homeowner-occupants to desire same, and who execute exchange agreements with the REDEVELOPER; futher, the REDEVELOPER has established a goal of providing maximum opportunity for displaced families and businesses to return to the new development. In order to achieve this goal, displaced families and businesses shall be given preference and priority on the following basis:

1. The displaced family or business shall, no later than his move from the Project Area, indicate his election to be placed on the Registry of Priority Holders, which shall be maintained on a current basis by the REDEVELOPER, and shall be open for periodic inspection by the AUTHORITY and members of the public during reasonable business hours at the office of the REDEVELOPER.

2. It shall be the responsibility of the displaced family or business to notify the REDEVELOPER of any change of address; and

3. Each Priority Holder shall be entitled to execute his preference in advance of non-priority holders, subject to his meeting the same requirements as those imposed on non-priority holders, including but not limited, in the case of business displacees, to the requirement that all commercial uses must be compatible with

the Redevelopment Proposal requirements, and in the case of family displacees, the ability to meet income requirements, if any.

In all instances where the Priority Holder has established and maintained his preferential right, the REDEVELOPER shall offer appropriate residential or commercial space at prevailing rates at least 30 days prior to the REDEVELOPER'S commencement of his general marketing operations for the particular space involved. If at the end of the 30 days the displacee has not accepted the offered space, the REDEVELOPER is free to proceed to offer the space to non-priority applicants.

11. The Project Area shall, for a period of twenty-five years from December 31, 1971, which date is the approval date of the Redevelopment Proposal by the Council of the City of Philadelphia, be used only for the uses specified in the Redevelopment Proposal.

The REDEVELOPER agrees to redevelop and improve the Project Area in accordance with the Redevelopment Proposal for the Project Area prepared by the AUTHORITY and dated July, 1971, and approved by City Council on December 31, 1971, in accordance with the drawings and specifications, site plans and maps, marked Exhibits C, 1-2 attached hereto and made a part hereof, in conformity with the requirements of Section 11 (a) (2) of the Urban Redevelopment Law. The REDEVELOPER shall furnish all of the labor and materials and perform all work as called for in said Exhibits.

* * *

FRANKLIN TOWN
RELOCATION STANDARDS AND GUARANTEES

Franklin Town accepts the standards and philosophy of the new Federal Uniform Relocation Act as the foundation of its relocation assistance program. In addition, Franklin Town will exceed the Federal standards as they may be administratively interpreted in the specific instances noted below.

HOMEOWNERS

Background Comment

Comments from residents within the Franklin Town area, as well as comments of City agencies and the public at large, have cited the need for special treatment and assurances for homeowners. Similarly, the Federal Uniform Relocation Act also places special emphasis on homeowner compensation. This is wholly proper, for uniquely among all residents, the homeowner has made a major long-term personal and financial investment within the area. That investment is often the homeowner's largest single asset, and special consideration is clearly warranted.

Financial Aid to Homeowners

Franklin Town adopts the Federal relocation payment standard for homeowner occupants, which consists basically of the following:

> A payment, over and above the fair price paid for purchase of the property itself, in an amount not to exceed $15,000 and covering: the difference if any between the price paid for the property and the cost of a comparable suitable replacement housing unit; compensation for any loss of favorable financing; and compensation for closing costs on the purchase of a replacement housing unit.

Franklin Town is prepared to exceed this Federal standard in the following ways.

(a) *Franklin Town Homeowners Guarantee*

Franklin Town guarantees that each and every displaced homeowner shall have access to a suitable comparable replacement housing unit without the homeowner's financial loss. This is a flat guarantee. In order to fulfill that guarantee, Franklin Town is prepared, if necessary, to exceed any governmental schedule which fails to adequately assure replacement housing.

The Franklin Town Homeowners Guarantee means, for example:

—if a homeowner presently has no mortgage, then he or she is assured of a comparable replacement home with no mortgage;

—if a homeowner presently has, say a $4,000 mortgage at a 4½% interest rate, then he or she is assured of a comparable replacement home with a mortgage of no more than $4,000 and an interest rate of 4½%, or payment for any interest rate differential.

Example

Cost of purchasing replacement house:	$16,000
Payment for value of present property	12,000
Franklin Town Homeowner Guarantee Payment	4,000
Total payment from Franklin Town .	$16,000

(b) *Franklin Town will make available, for as many of the estimated 31 homeowner occupants as desire it, replacement homes within the immediate vicinity of the Franklin Town project.* For example, within the blocks adjacent to the project boundaries, Franklin Town presently owns sites on which approximately fifteen new or rehabilitated homeowner units can be created. If more

than this number is required for homeowners, they will be similarly made available. For homeowners who prefer replacement homes elsewhere in the City, the financial guarantee outlined in (a) above will still apply.

TENANTS

Payment to Displaced Tenants

The Franklin Town payment to displaced tenants will be consistent with Federal Standards, which provide basically as follows:

(a) *Assistance for a tenant to become a homeowner.* A payment up to $4,000 to assist the displaced tenant in making a down payment towards purchase of a replacement housing unit provided the tenant matches any payment over $2,000; or

(b) *Assistance for a tenant's future rent payments.* Payments not to exceed $4,000 to assist a displaced tenant in renting a replacement housing unit, over a period not to exceed four years. This rental assistance is disbursed over a period of up to four years, depending on the annual difference between rent previously paid and the new rent to be paid.

PAYMENTS TO BOTH HOMEOWNERS AND TENANTS

The Federal standard provides payments for moving and related expenses. The displacee may select *either* payment for actual reasonable moving expenses *or* a fixed moving expense allowance not to exceed $300 and a dislocation allowance of $200. Franklin Town adopts this standard.

BUSINESS CONCERNS

Franklin Town adopts the Federal standard covering all relocation payments for business concerns. These payments cover actual moving expenses, loss of personal property, cost of searching for a replacement business *or*, if loss of patronage is involved, a fixed payment equal to average annual net earnings, but not less than $2500 or more than $10,000.

ALL RELOCATEES— FAMILY OR BUSINESS

Franklin Town's proposal to the City provides for a right of first priority in the new housing and business locations to be constructed within Franklin Town.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

200 Radnor Chester Road
St. Davids, Pennsylvania
January 18, 1973

Fed. Proj. I-76 2(30) 305
Philadelphia County
L.R. 67045-Section 9C
Claim No. 6706951
Albert Glassberg
R/W - W.M.

Mr. Leon Gross
1711 Vine Street
Philadelphia, Pennsylvania

Dear Mr. Gross:

Subsequent to a meeting with employees of PennDOT and your son at the subject premises, a decision has been made by our Engineering Staff to eliminate the take on the property you occupy at 1711-13 Vine Street. Therefore, it will be unnecessary to relocate your operation.

If you have any further questions, do not hesitate to call our office.

Very truly yours,

Joseph P. Synkonis, Jr., P.E.
District Engineer

AGREEMENT OF SALE

THIS AGREEMENT made this 9th day of February, 1973 between ALBERT L. GLASSBERG and EVA GLASSBERG, his wife ("Seller"), and FRANKLIN TOWN CORPORATION, a Pennsylvania corporation, or its Nominee, ("Buyer").

WITNESSETH:

1. Seller agrees to sell and convey to buyer, who agrees to purchase, ALL THOSE CERTAIN lots or pieces of land with the buldings and improvements thereon erected, referred to herein as the "Premises",

PREMISES "A"
BEING NO. 327 North 18th Street.

PREMISES "B"
BEING No. 1711 Vine Street
BEING No. 1713 Vine Street.

2. The price or consideration for the Premises shall be TWO HUNDRED AND TWENTY THOUSAND DOLLARS ($220,000.00) which shall be payable by buyer as follows:

(a) The amount of Twenty-two Thousand Dollars ($22,000) by check upon the execution hereof by Seller and Buyer, the receipt of which is hereby acknowledged.

(b) The balance thereof in the amount of One Hundred Ninety-eight Thousand Dollars ($198,000) by check at settlement subject to the terms and conditions hereof.

(c) All deposit monies paid pursuant to this Agreement shall be paid to Poquessing Corporation which shall retain the same in escrow until consummation or termination of this Agreement pursuant to the Act of Assembly of Pennsylvania of July 9, 1957, P.L. 608, as amended.

3. The Premises shall be conveyed by special warranty deed, free and clear of all liens, encumbrances and easements, excepting easements of roads and privileges or rights of public service companies, if any, and zoning ordinances; otherwise title to the Premises shall be good and marketable and such as will be insured by Commonwealth Land Title Insurance Company at its regular rates.

* * *

5. Possession shall be given at the time of settlement by delivery of a special warranty deed as aforesaid and keys to a vacant property subject only to the items mentioned in paragraph 3. Seller acknowledges that a portion of the Premises known as 1711 Vine Street is occupied by a tenant pursuant to the terms and conditions contained in the Lease Agreement dated June 13, 1960 between Seller, as lessor and Radio Broadcasting Co., as lessee, a true and correct copy of which lease, together with all amendments thereto is attached hereto as Exhibit "A". Seller agrees to give lessee under said lease timely and proper notice under the terms of the lease of the termination thereof effective June 30, 1973. A copy of such notice shall be sent to Buyer and its counsel. Seller agrees further that if said lessee does not vacate the leased premises in accordance with such notice, Seller shall bear the cost of evicting said lessee, including all attorneys' fees, but in no event shall Seller's liability for such costs exceed $5,000.00, which amount Seller agrees shall be escrowed out of the proceeds of sale to be paid hereunder to be held by Commonwealth Land Title Insurance Company and applied to such costs if at the time of settlement hereunder said lease has not been terminated and the lessee is still entitled to possession of the leased premises, or, if at the time of settlement, the term of the lease has expired, the lessee after receipt of timely and proper notice to do so has

failed to vacate the leased premises.* Seller shall be entitled to receive any rentals paid pursuant to such lease during the time Seller shall remain in possession of the Premises known as 1711 Vine Street pursuant to any lease agreement made between Seller and Buyer in accordance with the terms of paragraph 15 hereof. Seller represents and warrants, which representation and warranty shall survive settlement hereunder, that there are no other tenants or parties entitled to possession of any part or all of the Premises except the lessee identified in the lease attached hereto as Exhibit "A".

* * *

8. All plumbing, heating, air conditioning and lighting fixtures and systems appurtenant thereto and forming a part thereof, and all fixtures, machinery, appliances, equipment now in or on the Premises are included in this sale and purchase price and shall become the property of Buyer at the time of settlement of this transaction, except the trade fixtures listed in the Inventory of Trade Fixtures attached hereto as Exhibit "B" and made part hereof. Seller shall have the right to remove from the Premises only those items included in Exhibit "B" and none other. Upon the removal of any such item, the Premises shall be restored to the safe and sightly condition existing prior to the removal thereof.

9. Any loss or damage to the Premises caused by fire between the date of this Agreement and the time of settlement shall not in any way void or impair any of the conditions of this Agreement. Until settlement hereunder, Seller at his expense agrees to maintain the follow-

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* The escrow fund shall be promptly paid to Seller if the only reason for lessee's failure to vacate the leased premises relates to the payment of relocation or moving expenses to the lessee.

ing policies of fire insurance in the amounts and with the companies indicated:

(a) *327 N. 18th Street*
Gulf Insurance Company (No. 287021) $35,000.00

(b) *1711 Vine Street*
Gulf Insurance Company (No. 278252) $50,000.00
Glenn Falls Insurance Company (No. SMPO53677) $15,000.00
Bituminous Casualty Insurance Company (MP51879) $35,000.00

As of the date hereof all policies shall be endorsed by the insuring companies for the benefit of both Seller and Buyer as their respective interests may appear for as long as this Agreement is in effect. Fire insurance proceeds shall be paid to Buyer.

* * *

15. It is understood and agreed by the parties hereto that Buyer shall pay to Seller, provided settlement is completed in accordance with this Agreement, in addition to the consideration recited in paragraph 2 hereof the amount of $65,000.00 which amount shall be paid to Seller in lieu of all condemnation damages and in full satisfaction of any and all expenses, damages, claims and payments of any kind whatsoever Seller now has or which Seller may have against Buyer or Redevelopment Authority of the City of Philadelphia (the "Authority"), or the successors or assigns of either or both of them.

In consideration of the payment of the sum provided in this paragraph 15, Seller agrees to and does hereby release, indemnify and hold harmless Buyer and the Authority and their respective successors and assigns from and against any and all expenses, damages, claims and payments of any kind whatsoever arising out of or in

connection with the sale of the Premises to Buyer and the Franklin Town Project. The payment to be made by buyer to Seller pursuant to this paragraph 15 shall be due and payable to Seller by Buyer only when Seller shall have completely vacated the Premises 1711 Vine Street and 327 N. 18th Street, whether such vacation shall occur at the time of settlement under this Agreement or upon the termination of the last of any lease which may be entered into between Buyer and Seller at the time of settlement as provided in paragraph 16.

* * *

June 26, 1973

Radio Broadcasting Corp.
1711-13 Vine St.
Philadelphia, Pa.

Re: 1711-13 Vine St.
FRANKLIN TOWN

Attention: Mr. Gross

Dear Mr. Gross:

On June 21, 1973, Mr. Gallagher and I met with you, your attorney David Goldberg, Esq. and your engineer, Mr. Edwards, at your place of business. At that time, we discussed some of your relocation problems and the procedures you should follow to facilitate your move.

After inspecting your equipment and listening to Mr. Goldberg and Mr. Edwards explain the intricacies of the equipment, we find this move to be very complicated and unique. We requested a resume of Mr. Goldberg as to your move, concerning:

1. Value of equipment to be moved.
2. Who will do the actual move?
3. Length of time needed for moving.
4. What equipment will be left behind or abandoned?

Upon receiving the aforementioned, your letter of intent to move and a detailed list of inventory to be moved, we will be in a much better position to assess the overall picture.

Please be assured that we will assist you in every way possible. Feel free to call upon us at any time. The phone number is 665-9884.

Very truly yours,

MORTON BEST
Relocation Specialist
Commercial & Industrial
Relocation.

MB:mg
cc: Messrs. K. Klein, R. Fina, E. Gallagher

REDEVELOPMENT AUTHORITY
OF THE CITY OF PHILA.

Commercial and Industrial Survey Sheet

PROJECT: Franklin Town DATE: 3-15-73

ADDRESS: 1711 Vine St. ZIP CODE: _____

FIRM NAME: Radio Broadcasting Corp. TEL NOS.: LO 3-0239; 879-0900

KIND OF BUSINESS: Electronics NO. OF EMPLOYEES: ____

NAME AND TITLE OF PERSON INTERVIEWED: Peter Karamalengos, Mgr.

WHOLESALE _____ MFG. ___✓___ RETAIL GOODS ___✓___ SERVICES _____ INST. _____

PERIOD OF TIME IN OCCUPANCY: _____

FLOOR AREA OCCUPIED: 2,000 sq. ft.

OWN BUILDING: _____ RENT PER MONTH: _____

TO WHOM PAID: _____

MANAGEMENT SERVICES RENDERED: HEAT ____ JANITORIAL ____ LIGHT ____ OTHER____

PERSONAL PROPERTY OWNED BY TENANT: _____

_____

FUTURE PLANS: (CHECK)

CONTINUE: ___✓___ SELL _____ CHANGE _____

RETIRE _____ DISCONTINUE _____

DOES PROPRIETOR WISH HELP IN RELOCATION?

YES _____ NO _____

DESIRED LOCATION: _____

FLOOR AREA DESIRED: _____

AUTHORIZATION:

I hereby authorized the Philadelphia Redevelopment Authority to circulate my relocation space requirements among real estate and business brokers.

_____

SIGNATURE

_____

TITLE

REMARKS: Visited premises. Spoke with Mr. Karamalengos, Mgr. new address — 3600 Conshohocken Ave. move involves delicate equipment. Contact Mr. Gross at 879-0900. left handbooks. 3 handbooks picked up.

6-12-73—Spoke with Mr. Gross on phone re appointment. He is to call back for definite date.

6-21-73 Met with Mr. Gross, attorney Mr. David Goldberg and Engineer Mr. Edwards. We discussed the relocation problem. Explained proper procedure to take. This business is licensed by FCC and not allowed to discontinue service. The particular system is the only one of its kind in U.S.A. (per Mr. Edwards). See letter of 6/25/73.

Sept. 21, 1973—Visited premises. Spoke with Peter Karamalengos, Mgr. He claims they have added some equipment to their operation to facilitate the move. This operation cannot shut down due to F.C.C. regulations.

ESTIMATED MACHINERY DAMAGE: Oct. 26-1973—Met with Mr. Gross and his attorney, Earl Epstein. Mr. K. Klein, Mr. Gallagher and Mr. Best were in attendance. They have duplicated some intricate equipment at their new location in order to facilitate the move as they cannot shut down. Mr. Klein suggested a meeting with the principals of F.T. namely C. Van Der Veldt. We notified Mr. Van Der Veldt of Mr. Klein's suggestion and he said he would arrange a meeting at a future date and have F. T. attorney and some technical supervision at this meeting. He is to notify us of this meeting. This move will have to be negotiated as per Mr. Van Der Veldt.

Jan. 7, 1974 — Meeting held — in attendance — Malmed, Altimari, Fina, Reed, Klein, Best and Gallagher — We were told to *drop out of the picture on this case.*

July 9, 1973

Redevelopment Authority of the City of Phila.
Penn Square Bldg., Suite 500
1317 Filbert Street
Philadelphia, Pennsylvania 19107

Attention: *Mrs. Mary McCunney*

Re: Radio Broadcasting Co.
Franklin Town Redevelopment Project

Dear Mrs. McCunney:

Please be advised that this office is counsel for Radio Broadcasting Co., lessee of a portion of premises 1711 Vine Street, Philadelphia, Pennsylvania.

The real estate in which our client is a tenant has been condemned by the Redevelopment Authority of the City of Philadelphia in connection with its Franklin Town Project.

In accordance with the instructions of representatives of your Authority and those contained in the "Non-Residential Relocation Handbook" issued by your Authority, please consider this letter as a letter of intent to move on behalf of Radio Broadcasting Co. on or about September 30, 1973. The actual moving date will be furnished to you at least fifteen days before the moving date has been determined. Radio Broadcasting Co. will be moving to 3600 Conshohocken Avenue, Philadelphia, Pennsylvania. A list of the personal property, fixtures and equipment to be moved will be submitted to the Authority well in advance of the anticipated moving date. Other information concerning our client's claim for related service (carpentry, electrical and plumbing) will be submitted shortly.

In addition to the claim for moving costs and related moving expenses Radio Broadcasting Co. has a claim for

direct losses of personal property based on the value in place of such personal property.

Radio Broadcasting Co. is engaged in an unique business. It is a licensee of the Federal Communication Commission and the Pennsylvania Public Utility Commission. Its business includes, among other things, intra-plant communications; sub-channel transmission and reception of music by industry and offices; radio communication service; one-way signalling service; one-way paging service; two-way radio telephone service; and other types and kinds of radio telephone service on a common carrier basis.

The move necessitated by the condemnation of the premises occupied by Radio Broadcasting Co. will require extensive and costly installation of telephone lines and other equipment by the Bell Telephone Company; and in addition, it will require the construction and duplication in its new location of existing computer and highly sophisticated electronic devices. The services provided by Radio Broadcasting Co. cannot be interrupted for even a brief period because of the requirements of the licenses under the regulatory agencies and its legal contractual obligations to its customers. Appropriate information relating to the costs involved will be submitted to your Authority when such information is available.

In the meantime, if there is any further or additional information you require, please feel free to contact the undersigned and such data will be made available. Further, my client and I are prepared to meet with the representatives of the Redevelopment Authority upon request to discuss the matter and to endeavor to reach a mutu-

ally satisfactory agreement on the total damages to which Radio Broadcasting Co. is entitled.

Sincerely yours,

DAVID GOLDBERG

DG:sjf
cc: Radio Broadcasting Co.

REDEVELOPMENT AUTHORITY OF
THE CITY OF PHILADELPHIA
RECEIVED
JUL 9 - 1973

AM PM

7 8 9 10 11 12 1 2 3 4 5 6

July 9, 1973

Franklin Town Corporation
1500 Walnut Street
Philadelphia, Penna. 19102

Attention: Mr. Christopher Van De Velde
Re: *Radio Broadcasting Co.*

Dear Mr. Van De Velde:

In accordance with our several telephone conversations held recently, please be advised that this office represents Radio Broadcasting Co. which occupies a portion of premises 1711 Vine Street, Philadelphia, Pennsylvania, as lessee. The premises has been condemned as a part of the Franklin Town Project.

Radio Broadcasting Co. is a licensee of the Federal Communications Commission and the Pennsylvania Public Utility Commission and is engaged in the business among other things of intra-plant-communications; sub-channel transmission and reception of music by industry and offices; radio communication service; one-way signalling service; one-way paging service; two-way radio telephone service; and other types and kinds of radio telephone service on a common carrier basis.

As a result of the condemnation, our client is relocating to 3600 Conshohocken Avenue, Philadelphia, Pennsylvania. The move will be time consuming and costly because it is necessary for our client to construct and duplicate certain computers and highly sophisticated electronic devices in its new location in order to meet its obligations under its licenses and its agreements with its subscribers. Therefore, as I have indicated to you on the telephone, it will take approximately ninety days additional time for the relocation to be completed. It is, therefore, anticipated that the relocation will be completed on or about September 30, 1973.

This letter will serve to confirm our agreement and understanding that Radio Broadcasting Co. will have until September 30, 1973 to complete its relocation.

Your courtesy and cooperation is appreciated.

Sincerely yours,

DAVID GOLDBERG

DG:sjf
cc: Radio Broadcasting

November 8, 1973

David Goldberg, Esquire
Verlin, Goldberg, Ellis & Epstein
1210 Fox Building
1612 Market Street
Philadelphia, Pa. 19103

Re: *Premises 1711-13 Vine Street*

Dr. Mr. Goldberg:

This will confirm our telephone conversation of Tuesday, November 6, 1973 concerning the vacation of the second floor of the above premises by your client, Radio Broadcasting Company. Some background information seems appropriate.

Radio Broadcasting Company ("Lessee") and Albert and Eva Glassberg ("Lessor") entered into a lease dated June 13, 1960 for the second floor of the premises 1711-13 Vine Street (the "Lease"). By letter dated February 19, 1973 Lessor advised Lessee pursuant to paragraph 24 of the Lease that the Lease was terminated effective June 30, 1973, by which date Lessee would have to vacate the demised premises.

By deed dated May 29, 1973, Lessor conveyed the property 1711-13 Vine Street to Franklin Town Corporation subject to Lessee's right to remain on the premises only for the balance of the Lease.

Subsequently, you requested that Franklin Town Corporation permit Lessee to remain on the premises until September 30, 1973 in order to facilitate Lessee's removal to another location. Upon your representation that this was the maximum amount of time needed by your client to complete the move, I submitted to you and Mr. Gordon, counsel to Lessor, a Lease amendment which would have permitted Lessee to remain on the

property until September 30, 1973. In spite of subsequent inquiries as to the status of the amendment, neither Lessor nor Lessee executed and returned the amendment to me for execution by Franklin Town Corporation.

I understand you have had some correspondence and conversations with Mr. Gordon concerning Lessee's remaining on the premises after the termination of the Lease on June 30, 1973. Franklin Town was not privy to these communications and cannot be deemed to have acquiesced in any undertaking by Lessor in this regard, including the waiver or alleged waiver of Lessor's rights and remedies for Lessee's failure to vacate the premises, including the right to institute eviction proceedings.

You have advised me that Lessee will vacate the premises by November 30, 1973, but that it plans to leave behind a large piece of electronic equipment which, while not attended by employees, will nevertheless be used in connection with the operations of Lessee at its new location and that operation of that piece of equipment will cease by December 31, 1973. These plans of Lessor are unacceptable to Franklin Town Corporation.

Accordingly, this letter will confirm that Franklin Town Corporation expects that Lessee will have vacated the premises not later than November 30, 1973, by which date Lessee also will have removed all equipment, machinery and other property which it has installed or placed in the demised premises during the term of the Lease. So far as Franklin Town Corporation is concerned, Lessee's right to occupy the premises ceased upon the termination of the Lease on June 30, 1973 and this letter is intended only as an accommodation to Lessee so as to permit it to complete its moving operations and shall not be deemed as an extension of the Lease.

You will note that I am sending a copy of this letter to Mr. Gordon. Consistent with its agreement with Lessor, Franklin Town Corporation hereby requires Lessor to pursue agressively Lessee's complete vacation of the premises not later than November 30, 1973.

Very truly yours,

Gardner A. Evans

GAE/crd
HAND DELIVER
cc: Messrs. van de Velde
Gordon

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

A CONDEMNATION PROCEEDING IN REM BY:		APRIL TERM, 1973
REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA	:	
FOR THE PURPOSE OF REDEVELOPMENT OF FRANKLIN TOWN PROJECT, PHILADELPHIA, INCLUDING CERTAIN LAND, IMPROVEMENTS AND PROPERTIES	:	NO. 4488

OPINION

TAKIFF, J.
July 24, 1974

After public hearing held on December 8, 1971 before the Committee on Rules of City Council of the City of Philadelphia, Bill No. 2666 was duly enacted approving the proposal of the Redevelopment Authority of the City of Philadelphia for the redevelopment of a portion of the Center City Redevelopment Area identified as Franklin Town Project. Pursuant to Resolution of the Redevelopment Authority adopted on April 2, 1973, a Declaration of Taking, as authorized under the Urban Redevelopment Law of May 24, 1945, P.L. 991, 35 P.S. Sec. 170 et seq. was thereafter filed, duly recorded on April 26, 1973, and appropriate notice given. Preliminary Objections were timely filed on behalf of various condemnees under the Act of June 22, 1964, P.L. 84, Sec. 406, as amended, 26 P.S. Sec. 1-406, Answer containing New Matter and Reply were thereafter responsively filed.

Upon consideration of the pleadings and after extensive hearings held, the Preliminary Objections are Dismissed.

DISCUSSION

The Franklin Town Project site encompasses an area of approximately 50 acres bounded generally by 16th Street to 21st Street (East and West) and Spring Garden Street to Race/Vine Streets (North and South). This site was included generally in the detailed three volume study of the Central District of Philadelphia prepared for the Planning Commission of the City of Philadelphia by Alderson and Sessions (R-39, 39A and 39B*-N.T. 671-674), leading to its inclusion in the North Central Redevelopment Area (R-38-N.T. 707) which, on January 16, 1952 was certified by the Planning Commission to the Philadelphia Redevelopment Authority as a Redevelopment Area as defined by the Urban Redevelopment Law of 1945, based on findings of "a) Excessive land coverage by buildings and lack of proper light, air and open space; b) Unsafe, unsanitary, inadequate and overcrowded conditions of the dwellings; c) Faulty street and lot layout; and d) Inadequate planning of the area and economically and socially undesirable land uses."

A Summary Report by the Comprehensive Planning Division of the Planning Commission, prepared in February 1956, re-evaluated the Central Urban Renewal Area, exclusive of the Central Business District (from Vine to South Streets), emphasizing many blocks of deteriorated housing, inadequate traffic patterns, incompatible land uses and suggesting various proposals for the revitalization of this area through effective planning (R-40). The same year the Planning Division of the Redevelopment Authority published its Summary Report on the Central Urban Renewal Area, which it categorized as containing "most of the City's renewal problems," and urged a "major policy emphasis on the Central City designed toward putting the City in the best

*Exhibits have been marked at trial and are hereafter identified as follows: R-Redevelopment Authority; P-Preliminary Objectors, including the so-called Watch Dog Committee; K-Objector Krieg.

possible position in competition with the suburbs for residents and business" (R-41 at page 123); Central City being there identified as including the area presently under consideration.

Massive studies by the Planning Commission, including the "Pilot Plan" prepared in February 1957 (R-42), "Commercial Land Use Distribution", prepared by Larry Smith & Company, September 10, 1957 (R-45), "The Usefulness of Philadelphia's Industrial Plant", reported by Arthur D. Little, Inc. in January 1960 (R-46 and 46-A) and "Traffic Improvement and Parking Studies" proposed for the Philadelphia Streets Department by Wilbur Smith and Associates (R-43, 44 and 44A) gave consummation in May 1960 to the Comprehensive Plan for the City of Philadelphia (R-47) prepared by the City Planning Commission. This document, promulgated as the blue print for the future physical growth and development of the City of Philadelphia, was prepared in accordance with Section 4-600 of the Philadelphia Home Rule Charter and, in accordance with the mandate of the Charter, was modified thereafter from time to time. One such modification, dealing specifically with Center City, was effected on January 8, 1963 (R-48). The land use contemplated for the area now identified as Franklin Town was there denominated for institutional use along the Benjamin Franklin Parkway, and the Vine Street area contiguous to Logan Circle was regarded as an extension of the Penn Center Development or Market Street West (N.T. 91), with land to the north extending to Spring Garden Street and East to the Delaware River projected for industrial usage (R-48 at page 25), (N.T. 185-186). On the same day the City Planning Commission certified to the Redevelopment Authority of the City of Philadelphia the Center City Redevelopment Area, consolidating prior segmental certifications into a unified planning unit, and recertifying the characteristics defined in Section 3(n) of the Urban Redevelopment

Law of May 24, 1945, as amended, qualifying it as a redevelopment area (N.T. 465 and 681). The redevelopment area plan was transmitted to the Redevelopment Authority on February 19, 1963 (R-50).

At that time it was recommended that the portions denominated "industrial" should be implemented for such uses as printing, manufacturing of clothing and light equipment and similar activities. Such redevelopment was in fact initiated in the easterly portions of the Center City Area between Front and 6th Streets and between Vine and Spring Garden Streets. That plan, with modifications not germane to Franklin Town (N.T. 473), was resubmitted to the Redevelopment Authority on December 19, 1967, representing a recertification of the area as qualified for redevelopment in accordance with the Urban Redevelopment Law, for the reasons previously enunciated in earlier certifications (R-51, N.T. 628, 642-643). An interim study of portions of the area encompassed by Franklin Town had been made in 1965 by the Planning Commission when the Hahnemann Urban Renewal Area was under consideration (N.T. 647-649).

Thus, a determination of "blight", based on the criteria defined in the Urban Redevelopment Law, applicable to a larger area but including the site of the proposed Franklin Town, had been repeatedly certified prior to the conception of this specific project (N.T. 478).

Franklin Town was originally conceived as a joint venture consisting of Philadelphia Electric Company, Smith Kline & French (now Smith Kline Corp.), ITE Imperial, The Korman Corp., Butcher & Sherrerd and, in its earliest phase, City Stores (Lit Brothers). The Joint Venture was succeeded by Franklin Town Corporation in which the same participants were stockholders. Philadelphia Electric, as a public utility, received authorization from the Public Utility Commission on August 9,

1972 to be a participant and shareholder, as required under Sec. 202(f), Art. II of the Public Utility Law: R-33 (N.T. 404-405). Jason Nathan, who became the President of Franklin Town Corporation, had been the executive officer of the predecessor joint venture.

Nearly all of the participants in the project owned property within its boundaries. From the inception of the concept of Franklin Town, Mr. Nathan counseled the participants that it should be a non-subsidized or non-assisted project, i.e., no governmental assistance as to land acquisition, interest, or otherwise so that the total cost of the project would be on the redeveloper, alone. Similar non-assisted redevelopment projects in the City of Philadelphia have included Park Towne Place, erected in the 50's and 1500 Market Street (N.T. 1067), which is currently approaching completion; the bulk of redevelopment projects are "assisted" (N.T. 1590).

Commencing in 1969 the participants, seeking to determine the feasibility of the project, consulted various persons and public bodies including the Mayor, the Redevelopment Authority and the Planning Commission. These inquiries were undertaken in order to determine the cooperativeness of all affected agencies and bodies, without whose involvement the project would be unworkable on a non-assisted basis.

The total site contemplated 50 acres of which the private participants owned approximately 20 acres; approximately 15 acres were in streets (N.T. 699, R-12) and 15 acres were originally to be acquired by negotiation and/or condemnation. A number of properties were acquired by Franklin Town prior to condemnation (R-21, N.T. 870). The existing use is primarily warehousing, heavy commercial, and parking. Small enclaves of mixed residential, office and retail use are proliferated through the area, in varying states of repair ranging from completely habitable to dilapidated (N.T.

65). The relative proportions of each class of use are: Industrial/commercial—18.9 acres; Parking—8.2 acres; Residential—2.8 acres; unused/vacant—3.5 acres; Railroad—1.3 acres; streets—14.5 acres—Total 49.2 acres. From early 1960 to the present time the only increasing usage to which the area was put was the expanding use for parking (N.T. 75). Comparison of the 1960-1970 census reports indicates a decline in residential use in the area (N.T. 184-185). Between 1963, when it was last previously certified for redevelopment and 1971 when it was recertified, there was no substantial investment in new plant or facilities within the site boundaries (N.T. 738).

The total site encompasses 82 properties remaining to be acquired following condemnation—either by negotiation or adversary proceedings (N.T. 873). It does not conform with classic, evenly demarcated boundaries. The irregularity is, in part, affected by existing and ongoing programs including the Pennsylvania Highway Department plans for major ramp interchanges for Vine Street Expressway at 15th and 16th Streets*, the Hahnemann Redevelopment area, the recently constructed Bell Telephone and Pennwalt-Friends Select Buildings, the Cathedral of St. Peter and St. Paul, etc.

The irregularity of the condemned area has been defined and explained. The Planning Commission, the Redevelopment Authority and Franklin Town personnel participated in various discussions and mutual agreements resulting in inclusion and exclusion of various properties from the site (N.T. 703-704). These discussions occurred at early stages of the planning (N.T. 391). The "south block", i.e., 16th to 17th Streets, Race

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* Several blocks fronting on Vine Street are contemplated to be the subject of later condemnation by Redevelopment Authority in conjunction with or ancillary to the Highway Acquisition.

Street to Vine Street, which on the map adds to the non-symmetrical appearance of the plot plan, was regarded by the Planning Commission "as a very important link between the Penn Center area . . . and the blocks to the north . . . by using the block as a transition . . ." (N.T. 481). In the Center City Redevelopment Area Plan of 1967 (R-51) the "south block" was designated as mixed residential, commercial and institutional. This location is indubitably very convenient and desirable for the residents who have lived there (N.T. 1092), being accessible to Franklin Institute, Friends Select School, public buildings, within walking distance to downtown office buildings, etc. (N.T. 1094-95). The south side of Summer Street, 16th to 17th, whose residents were among the most active objectors, has properties whose original designs is attributed to Thomas U. Walter, Architect. Several of these architecturally significant properties, however, have been demolished and/or altered (N.T. 1096-98).

The essential reason for the inclusion of the "south block" was to tie the entirety into the recent Penn Center development and the transportation facilities of the Suburban Station, to create commercial and hotel uses, to effect meaningful pedestrian patterns and to make the entire project a feasible and integral part of the Central City Redevelopment (N.T. 84 and 662).

Examination of the total plot plan suggests that it was "gerrymandered". However, this optical conception must be understood in the light of the existing structures previously referred to as well as the current plans for the contiguous areas. To the south and west are the Free Library, the Court House, Rodin Museum and the recently rebuilt Hancock Gross Industrial building. The south side of Spring Garden Street, 16th to 18th Streets, was in part the site of the former U. S. Mint, which has been acquired by the Philadelphia Community College together with the adjoining block, reserved for future

college development (N.T. 68). As to the area north and south of Callowhill Street between 16th and 17th one substantial portion is Reading Railroad property which is involved in protracted litigation (N.T. 367) and the other portion represents loft buildings which were recently or substantially improved and are the situs of substantial employment (N.T. 69-70 and 280).

Optimum planning might well have included the Lit Brothers Warehouse, located at 17th to 18th Streets, Reading Railroad to Hamilton Street (N.T. 687 and 711) and the Hancock Gross plant, contiguous to the westerly end of the site. The latter, however, was excluded because it is a recently constructed building, represents a substantial number of jobs and is not incompatible with the project. The Lits' property was excluded because of the inability of the sponsors of Franklin Town to reach agreement on a negotiated price for its acquisition and their unwillingness to risk the hazard of bearing the full (rather than "assisted") cost of the site if it were to be acquired under adversary condemnation proceedings (N.T. 1299).

The total site currently produces approximately $300,000 annually in real estate taxes; this has been described as the lowest taxable income per square foot in Center City. The development plan contemplates the generation of a new town with 4000 residential units, park, boulevard and a commercial sector (R-8). In addition, the project contemplates 3 to 4 million square feet for office space, miscellaneous commercial uses such as shops, stores, restaurants, hotels, etc. (N.T. 273). As of the time of the hearing on the Preliminary Objections all of the property exclusive of street beds was either previously owned or had been acquired by Franklin Town, with the exception of approximately 5 acres (N.T. 79 and 266). This is graphically illustrated on Exhibit R-9A.

The Franklin Town Project, under study and consideration from late 1969, was publicly announced on

June 3, 1971 (P-17, N.T. 1179). The formalization of the project moved swiftly thereafter. On June 4, 1971 by Resolution #7522, Franklin Town, then a joint venture composed of the participants previously identified, was conditionally selected by the Redevelopment Authority as the redeveloper (R-55) (N.T. 1015), subject, inter alia, to a submission of its qualifications and the deposit of the sum of $25,000 with the Authority as "working capital". A survey of environmental and building conditions in the Franklin Town and adjacent area to be performed by Metropolitan Engineers, Inc., was authorized jointly by the Planning Commission and the Redevelopment Authority in April or May 1971 (N.T. 737, 1643), preliminarily reported on June 16, 1971 (N.T. 513) and formally transmitted on July 19, 1971 (R-52, N.T. 1646). Metropolitan Engineers, Inc. is a concern engaged in urban renewal and planning studies. The survey was performed by two registered engineers, a registered architect, planner and structural survey team (N.T. 1641-1646).

The Metropolitan Engineers study was predicated upon the criteria of blighting influences as specified in the Pennsylvania Urban Redevelopment Law (Section 1702a). The report is summarized in eight categories of environmental deficiencies, i.e., 1) traffic and circulation deficiencies, 2) incompatible land use relationships, 3) overcrowding of buildings on the land, 4) excessive dwelling unit density, 5) obsolete buildings not suitable for improvement or conversion, 6) hazards to health and safety, 7) economically undesirable use of the land, and 8) miscellaneous environmental deficiencies. Table 1, at page 5 of the report, being a summary of the incidence or frequency of environmental deficiencies as to each of the 23 blocks in the studied area, shows a proliferation of these deficiencies throughout the entire area. Four scattered blocks, i.e., Nos. 3, 8, 13 and 18, (none of which are included in the Franklin Town area) showed no defi-

ciencies while all the others, in one or more categories, were reported as containing deficiencies (See Map 3, R-52). This study contains numerous photos illustrative of the conditions therein described. The findings reported by Metropolitan Engineers were consistent with the findings made at the time of the last prior recertification in 1967, i.e., one or more elements of blight existed in all of the area, in varying degrees in various parts, sufficient to warrant the finding of blight in the entirety (N.T. 655).

This survey, supervised by the Executive Directors of the Planning Commission and the Redevelopment Authority, reconfirmed that the 1963 Certification made pursuant to the Urban Redevelopment Law of 1945, under which the elements of blight, as defined in the statute, were then found (N.T. 468, 644 et seq.) persisted as of the time of the 1971 survey (N.T. 491, 640).

Based upon all of the studies, including the current Metropolitan Engineers study, the Planning Commission enacted and on July 20, 1971 transmitted to The Redevelopment Authority an amendment to the Center City Redevelopment Plan, modifying the proposed land use, consistent with the projected Franklin Town (R-53). At the meeting of the Planning Commission held on September 7, 1971, attended by a number of the protestants including several witnesses who testified in the present proceeding the Franklin Town Redevelopment Proposal (N.T. 528, 727 and R-54a) was approved; subject to certain modifications not presently germane (R-54).

In arriving at the determination of approval, the Planning Commission considered multiple environmental factors and deficiencies. The evaluation included consideration of the "south block" and specifically Summer Street between 16th and 17th, where certain of the properties were dilapidated (N.T. 541) and other envi-

ronmental deficiencies including uneconomic land use were found (N.T. 543). Among other deficiencies the Franklin Town area presently contains narrow streets, with particular congestion on the north-south streets, industrial buildings with poor loading facilities and antiquated construction representing fire hazards (N.T. 469), unsafe and dangerous conditions in various alleys and street intersections (551), unsanitary conditions in lots and yards, buildings subject to code violations (N.T. 553), overcrowding of housing based on census figures (N.T. 554), inadequate planning and multiple incompatible land uses.

The Redevelopment Authority of the City of Philadelphia, created pursuant to the Urban Redevelopment Law, supra, formally considered the Franklin Town proposal at a regularly scheduled meeting on June 4, 1971 (P-11) and by Resolution #7522 conditionally approved Franklin Town, a joint venture, as redeveloper for the Project. On June 16, 1971, an undertaking referred to as an "Assistance Agreement" was entered into between Franklin Town, a joint venture, and the Redevelopment Authority, providing for the rendition of professional and technical service by Redevelopment personnel required for the preparation of a redevelopment proposal, preparation of ordinances, acquisition of properties, management of acquired properties and other services, all of the direct and indirect costs thereof to be paid for by the redeveloper, Franklin Town. Payment for such services was to be made as billed, secured by a $25,000 deposit fund (working capital), to be replenished as reduced.

Following public meetings at which objections to the proposed project were received and considered, at its session on September 3, 1971 the Authority enacted Resolution #7635 reaffirming its selection of the developer, approving the developer's financial ability to acquire the area, approving the Redevelopment Proposal and authorizing preparation of the Ordinance to implement the execution of the project (R-56, N.T. 1033).

* * *

The Redevelopment Proposal, with recommendations (R-13), was submitted by the Planning Commission to the President and Members of the Council of the City of Philadelphia on September 7, 1971, with the certification that the proposed Redevelopment Agreement between the Redevelopment Authority and "Franklin Town, A Joint Venture, To Be Reorganized As A Pennsylvania Corporation" was in accordance with the Center City Redevelopment Area Plan, as adopted on December 19, 1967, as amended.

Public hearing was held before the Committee on Rules on December 18, 1971 at which time a number of the witnesses in support of the Preliminary Objections appeared. At that hearing Franklin Town was envisioned as the implementation of the plan conceived a half century ago when the Benjamin Franklin Parkway and the public buildings bordering it were designed and executed in anticipation that they would provide the impetus to the reconstruction of Center City's northwestern quadrant. In the intervening years, however, that area north of the Parkway had deteriorated, with the scattered enclaves of homes "struggling to maintain a foothold in a hodge podge of factories, warehouses and vacant lots." (Pages 6 and 7 of R-14).

Council Bill No. 2666 was approved by the Mayor on December 31, 1971 and authorization thereby given to the Redevelopment Authority "to proceed with minor changes in substantial conformity with the said Redevelopment proposal." In Section 5 the Ordinance provided "Redevelopment Authority is authorized to execute the hereby approved Redevelopment contract with Franklin Town ... The Redevelopment Authority and the redeveloper are authorized to take such action *in substantial conformity* to the Redevelopment Contract as may be necessary to carry it out." (Emphasis added).

Although a non-assisted project and hence not subject thereto, the Franklin Town relocation standards and

guarantees, as provided under Section 5 of the Ordinance, equal or exceed the standards of the Federal Uniform Relocation Act of 1971 (N.T. 778, 1130 and R-15, Sec. 5). In addition, real estate tax assistance has been provided as the obligation of the redeveloper for qualified, relocated single family home owner occupants for a term of ten years (Section 10 of the Ordinance).

The original Joint Venture was succeeded by Franklin Town Corporation, a Pennsylvania Corporation, in which the original joint venturers became the stockholders. The participants contributed the land severally owned by them to the Joint Venture and thereafter received stock when the transfer of entity was effected on August 18, 1972. In addition to the land originally owned by the several participants, prior to the Declaration of Taking they negotiated and acquired a number of additional properties within the area (R-21).

* * *

that the project is "non-assisted" and hence not subject to certain Federal Statutes, except as to certain post condemnation standards which have been contractually assumed by the redeveloper.

* * *

IN THE COURT OF COMMON PLEAS

— PHILADELPHIA COUNTY —

CONDEMNATION OF	:	FEBRUARY TERM, 1978
1711-13 Vine Street	:	
Philadelphia, PA. 19103	:	
by Commonwealth of	:	
Pennsylvania;	:	NO. 3985
Redevelopment Authority of the	:	
City of Philadelphia; and	:	
Franklin Town Corporation	:	ATTORNEY I. D. 13202

ORDER

AND NOW, this 10th day of July A. D. 1979, it is ORDERED AND DECREED that Paragraph 8 of Radio Broadcasting Corporation's Petition for Appointment of a Board of View is amended to read as follows:

> "8. Moving Petitioner's personal property was unique and complicated; Petitioner was forced to expend money on removal expenses and/or abandon equipment for an aggregate cost to Petitioner of $615,990.24, as a direct and proximate result of being displaced."

BY THE COURT:

KALISH, J.

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

TRIAL DIVISION

RADIO BROADCASTING CORPORATION	:	FEBRUARY TERM, 1979
v.	:	
FRANKLIN TOWN CORPORATION	:	
and	:	NO. 872
REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA	:	
and	:	
RICHARD ROE AND JOHN DOE, AND OTHERS	:	IN TRESPASS AND ASSUMPSIT AND FOR DECLARATORY JUDGMENT

OPINION

By: Kalish, J.

BACKGROUND

Plaintiff Radio Broadcasting Company ("R.B.C.") brings this action against defendants Franklin Town Corporation ("Franklin Town") and the Philadelphia Redevelopment Authority ("The Authority") on theories of assumpsit, trespass, and for a declaratory judgment. The plaintiff argues that Franklin Town is liable to it for damages since it is a third party beneficiary of a contract between Franklin Town and The Authority which entitles individuals in R.B.C.'s situation to damages. The plaintiff also claims that the defendants are also liable on a tort theory since the defendants "wrongfully" injured its property. Plaintiff had earlier filed two eminent domain petitions for the appointment of a Board of View, seeking essentially the same damages as this action seeks. The defendants have filed preliminary objections in the nature of a demurrer, primarily arguing that this action is

duplicative of the other cases and must be dismissed since the Eminent Domain Code has exclusive review over matters such as these.

Examining plaintiff's allegations in their most favorable light, as this Court is required at this point in the pleadings, *Gekas v. Shapp,* 469 Pa. 1, 364 A.2d 691 (1976), the following facts are established: R.B.C. was a business tenant on the premises of 1711-13 Vine Street from 1960 until January 31, 1974. On June 3, 1971, Franklin Town announced its plans to redevelop an area which included 1711-13 Vine Street. On December 15, 1972 the Authority and Franklin Town agreed on an "assistance agreement" whereby Franklin Town agreed to provide businesses displaced from the redevelopment area with compensation in accordance with the standards of the federal Uniform Relocation Assistance Act ("the U.R.A."), 42 U.S.C. Sections 4601 et seq. In February, 1973, Franklin Town amicably purchased the premises of 1711-13 Vine Street in lieu of condemnation. The agreement required the owner of 1711-13 Vine Street to notify R.B.C. that its lease would terminate at the end of the current term, June 31, 1973. In April, 1973, the Authority filed a Declaration of Taking pertaining to this redevelopment area. On January 31, 1974, R.B.C. moved from 1711-13 Vine Street to new quarters.

DISCUSSION

Plaintiff's claims in this action are actually disguised requests for displacement damages. Since displaced person damages are governed by the Eminent Domain Code, a petition for such damages must be brought under the Code. "The Code is the complete and exclusive procedure for condemnation cases, *de facto* or otherwise." *Lerro v. PennDot,* 32 Pa. Comm. 372, 375, 379 A.2d 652 (1977). "The Board of Viewers is expressly authorized to hear and determine claims for removal expenses, business dislocation expenses, and moving ex-

penses." *Appeal of Union Electric Contracting Co.*, 396 A.2d 862 (Pa. Comm., 1979).

If an alleged displaced person could sue under a redevelopment contract, as plaintiff seeks to do here, there would be no need for the Code. There would also be no need for the code if an alleged displaced person could sue a Redevelopment Authority for tortious damages for the wrongful injuring of its property. This is not a situation where plaintiff's property was injured by a public agency where there was no taking at all. In such a case, plaintiff is entitled to bring an independent cause of action. *City of Pittsburgh v. Gold*, 390 A.2d 1373 (Pa. Comm. 1978). Here, however, there was a condemnation and an amicable acquisition in lieu of condemnation. The legislature has clearly evidenced its intent that damages in this situation are under the exclusive purview of the Code. "It is intended by this Act to provide a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages therefore. . ." 26 P.S. Section 1-303.

Plaintiff is limited to the damages that he may recover in his already-filed eminent domain petitions. He may not duplicate these actions in a non-Eminent Domain Code lawsuit.

Accordingly, the Court enters the following:

ORDER

AND NOW, this 16th day of August, 1979, the Preliminary Objections of the defendants are sustained, and the plaintiff's Complaint is dismissed.

BY THE COURT:

KALISH, J.

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

TRIAL DIVISION

CONDEMNATION OF 1711-13 Vine Street, Philadelphia, PA 19103 by Commonwealth of Pennsylvania; Redevelopment Authority of the City of Philadelphia; and Franklin Town Corporation (Radio Broadcasting Company Petition):	:	February Term, 1978 NO. 3985

I. FINDINGS OF FACT

1. Radio Broadcasting Company ("RBC") is a Pennsylvania corporation engaged in the radiowave communication business, and at all times material was the holder of a Public Utilities Commission certificate requiring RBC to provide continuous service.

2. Redevelopment Authority of the City of Philadelphia ("Redevelopment Authority") is an urban redevelopment authority vested with the power of eminent domain.

3. Franklin Town Corporation ("Franklin Town") is a Pennsylvania corporation privately held and financed.

4. Department of Transportation — Commonwealth of Pennsylvania ("PennDOT") is a department of State government vested with the power of eminent domain.

5. Albert and Edith Glassberg (hereinafter "Owners") at all times material owned 1711-13 Vine Street, Philadelphia, Pennsylvania.

6. On June 16, 1960 the Owners leased the second floor of 1711-13 Vine Street to RBC for a term of 3 years, with annual renewals thereafter unless terminated by 90 day notice.

7. Thereafter RBC occupied the second floor of 1711-13 Vine Street, and later on enjoyed roof rights under the lease.

8. In 1968 RBC built a sophisticated electronic computer terminal in the front portion of its leasehold space which was improved upon in subsequent years.

9. In late 1969, PennDOT announced its plans for acquisition of the Vine Street frontage including the first 10 feet of the building located at 1711-13 Vine Street in connection with the proposed Vine Street Expressway.

10. As a result of the foreseeable PennDOT taking, the Owner refused to renegotiate RB's lease to give a longer term.

11. PennDOT's taking of the building would have cut through a critical portion of RBC's terminal, which would have interrupted service, forbidden under the terms of RBC's P.U.C. license.

12. As a consequence, RBC embarked on a search for suitable leasehold space to move to in the future, and in early 1971 RBC entered into a lease with River Park House, 3600 Conshohocken Ave., Phila., Pa. for a five year period beginning June 1, 1971.

13. On June 3, 1971 Franklin Town announced its redevelopment project which included premises 1711-13 Vine Street within its boundaries.

14. On June 16, 1971, the Redevelopment Authority and Franklin Town executed an "Assistance Agreement", whereby Franklin Town Corporation agreed to pay relocation payments to displaced occupants. Subsequently, the Authority and Franklin Town entered into a Redevelopment contract.

15. RBC decided to install a new terminal at River Park House, then shut off the old terminal at 1711-13 Vine Street when the new one was put into operation,

because physically moving the old terminal would interrupt service, and might result in serious damage to the electronic components in the terminal.

16. PennDOT filed a Declaration of Taking which included a strip of the front of the building at 1711-13 Vine Street on October 24, 1972.

17. On January 18, 1973, PennDOT notified petitioner that "a decision has been made by our engineering staff to eliminate the take on the property you occupy at 1711-13 Vine Street. Therefore, it will be unnecessary to relocate your operation."

18. PennDOT did not at any time relinquish its condemnation of premises 1711-13 Vine Street, Phila., PA.

19. On February 9, 1973, Franklin Town entered into an Agreement of Sale with the Owner of 1711-13 Vine Street to purchase 1711-13 Vine Street. Franklin Town required in the agreement that the seller have the burden of evicting RBC. Possession was to be given at time of settlement, July 2, 1973. This purchase was in lieu of condemnation of these premises by the Redevelopment Authority.

20. On February 19, 1973, the owners of 1711-13 Vine Street by their attorney notified RBC that its lease would terminate on June 30, 1973, the end of the then current term.

21. On April 26, 1973, a Declaration of Taking was filed by the Redevelopment Authority for the Franklin Town Urban Renewal Area, which area had at its southern boundary in the 1700 block, Vine Street, but which did not include 1711-13 Vine Street. The property was to be acquired for a plan or project involving a blighted area.

22. On May 29, 1973, Franklin Town Corporation settled 1711-13 Vine Street with the owners, escrowing

$70,000.00 of the proceeds to secure the vacancy at the end of RBC's lease in June 30, 1973.

23. On November 8, 1973, Franklin Town advised counsel for RBC that RBC must vacate the premises by November 30, 1973 or counsel for the owners, Albert L. Glassberg and Eva Glassberg, would compel eviction.

24. RBC, having completed its replacement terminal, abandoned its old terminal and other equipment at 1711-13 Vine Street on January 31, 1974, and moved to River Park House.

25. 1711-13 Vine Street was vacant from January 31, 1974 until it was demolished by Franklin Town in the Spring of 1976.

II. CONCLUSIONS OF LAW

1. Franklin Town's acquisition of 1711-13 Vine Street was part of a comprehensive plan for public purposes.

2. The redevelopment contract and assistance agreement between the Redevelopment Authority and Franklin Town establish the obligation of the Authority to acquire properties within the Franklin Town Urban Redevelopment Area by eminent domain, if the same could not be amicably acquired by Franklin Town.

3. Franklin Town, being a private developer with no public funds involved, and without any eminent domain powers, is not liable for moving or dislocation damages resulting from the acquisition of petitioner's property.

4. The Redevelopment Authority of the City of Philadelphia is not liable for the acquisitions of the private redeveloper, Franklin Town.

III. DISCUSSION

This case requires this Court to interpret that section of the Eminent Domain Code providing for certain types of damages to a person who is displaced as a result of an acquisition of real property for a program or project. The definition of a displaced person governs eligibility.

Section 201(8) of the Code (26 P.S. Sec. 1-201(8)) provides:

> "Displaced person means any condemnee or other person not illegally in occupancy of real property who moves or moves his personal property as a result of the acquisition for a program or project of such real property . . ." (Added Dec. 29, 1971)[1]

The petitioner Radio Broadcasting Company brings this petition for appointment of the Board of View for displacement damages. Defendants Franklin Town Corporation and the Redevelopment Authority have filed Preliminary Objections to this petition.

The defendants resist the claim contending that the petitioner could not be a displaced person since he did not move as a result of an acquisition of the property for a program but rather *moved because his lease was terminated by his landlord,* relying principally on the case of *Hindsley v. Township of Lower Merion,* 25 Pa. Comm. 455, 360 A.2d 297 (1976). In this case, the Common-

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1. Section 601-A of the Code provides:

"(a) Any displaced person shall be reimbursed for reasonable expenses incurred in moving himself and his family and for the removal, transportation, and reinstallation of personal property . . .

(b) Any displaced person who is displaced from his place of business or from his farm operation shall be entitled, in addition to any payment received under subsection (a) of this section, to damages for dislocation of such business or farm operation as follows: . . ."

wealth Court held that a tenant could not be a displaced person where the agency acquiring the property by private negotiation simply terminated his lease in accordance with the provisions of said lease or where the tenant is permitted to remain in possession until the end of the lease.

Under this theory the tenant argues that he would be unjustly deprived of displacement damages; that notwithstanding *Hindsley*, (supra) the state appellate court decisions offer no real guidance and urges that an examination of the Uniform Relocation Assistance Act, 12 U.S.C. Sec. 4601, (the basis for the state provision on displacement damages) would show that it was intended to cover voluntary transactions in which the tenant was required to move as a result of a landlord selling the property in lieu of condemnation.

The available federal legislative history and court interpretations indicates that the purpose of the legislation was to cover people displaced by public programs or projects whether the actual acquisition was by condemnation or voluntary sale. Although this history and interpretation is not binding on this Court, they are instructive and provide guidance to state courts. *See, Robinson v. Abington Education Assn.*, 32 Pa. Comm. 563, 379 A. 2d 1371 (1977), *McCluskey v. Commonwealth Dept. of Transportation*, 391 A.2d 45 (Pa. 1978). The Report of the Public Works Committee of the House of Representatives stresses that the actual form of the transaction must be pierced to see what the substance is. It doesn't matter by what method the property is obtained to granting benefits to displaced persons, if the property is used for a public purpose.

> "It makes no difference to a person required to move because of the development of a postal facility which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee

> title to the property. Since the end product is the same, a facility which serves the public building, any person so required to move is a displaced person entitled to the benefits of this legislation."

House Report No. 91-1656 (1970) U.S. Code Cong. & Adm. News 5850, 5854.

The regulations promulgated under the U.R.A. make it clear that a voluntary purchase/sale of property does not automatically exclude displaced person benefits to a tenant living in such property. H.U.D.'s discussion of U.R.A. acquisition policies includes the following:

> "The Department has determined that any voluntary property sale, which is not identified at Section 42.101 as a transaction exempted from the acquisition rules, is subject to the Uniform Act (U.R.A.) . . ."

44 F.R. 30947 (1979). Only those acquisitions resulting from a voluntary proposal submitted by the owner in response to a public invitation or solicitation for offers are excluded from U.R.A. coverage. 24 C.F.R. Section 42.101 (as amended by 44 F.R. 30946 on May 29, 1979). Although this discussion appears only in subpart B of the regulations where there is no specific reference to displaced persons, it is the only discussion of the term "acquisition" in the regulations and certainly must apply to the term as it is used in the definition of displaced person:

> ". . . any person who moves from the real property . . . as a result of the state agency's acquisition of such real property in whole or in part for the project . . ." 24 C.F.R. Section 42.49.

Federal case law also makes it clear that benefits under this statute are not limited to a condemnation.

> "(The U.R.A.) was intended to benefit individuals who were not willing sellers." *Moorer v. H.U.D.*,

> 561 F. 2d 175 (8th Cir. 1977). "We think it pure sophistry to say that the 184 owners who sold out to the state, and the 103 families who moved out, as a result of such sales, were not displaced, or that they did not sell or move as a result of a reasonable expectation of acquisition of the property, or that the project did not cause the displacement."

Lathan v. Volpe, 455 F. 2d 1111, 1119 (9th Cir. 1971).

Defendants' contention that terminating the lease in accordance with its terms removes liability appears to be at odds with the announced intention and purpose of the statute. Thus, in a case where plaintiff tenants had their leases terminated and were facing evictions as a result of their landlord defaulting on mortgages insured by the Federal Housing Administration (F.H.A.), the 2nd Circuit Court of Appeals agreed that the plaintiffs may well have been moving as a result of the acquisition of the property. *Caramico v. H.U.D.* 509 F. 2d 694, 697 (1974). The thrust of the Court's decision was that a default acquisition by the F.H.A. was not a "program" undertaken by a federal agency within the purview of the U.R.A.

The issue of displacements resulting from voluntary purchases not being an acquisition under the statute is an issue that is just not raised in the federal courts,[1] c.f. *Young v. Harris* (Slip Op. C.A. 78-1896 — 8th Cir. filed June 12, 1979).[2]

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[1] The U.S. Supreme Court has held that where HUD acquires a housing project as a result of a default by the project's sponsors on a federally insured loan and *then terminates the leases* of the tenants, the tenants are not entitled to benefits *because the acquisition was not for a federal program*. Apparently, there was no dispute that this was still an "acquisition" under the statute. *Alexander v. HUD*, 60 L. Ed 2d 28 (1979).

[2] A private developer acquired land and evicted tenants. They were not entitled to benefits because private developer is excluded from coverage of the U.R.A. Defendants did not argue that there was no acquisition.

The Joint State Government Commission, which proposed the state displaced person statute commented that a tenant is entitled to benefits if he is in legal occupancy at the time the property is acquired.

> "To qualify as a displaced person under this definition, one must be in legal occupancy of the property *at the time it is acquired . . .*"

Comment to Section 201(8) of the Code, Joint State Governmental Commission, 1971-72. Assuming that the acquisition is for a program, the displaced person's rights to benefits become vested at the moment of acquisition and cannot be changed by later actions of the acquiring agency.

However, while there may well have been an "acquisition" within the meaning of the act that is not enough to entitle the petitioner to benefits. The U.R.A. is so structured that a *private developer* has no liability for displacement benefits. *Young v. Harris, supra, Moorer, supra.*

> "(T)he manner in which the Uniform Act is written excludes persons displaced by federal projects undertaken by any entity other than an agency of the Federal Government, a State, or State Agency." *Ibid.* at 182 (quoting Senator Muskie from Senate Report 93-10). "It is the established law in this Circuit that the URA definition of program or project undertaken by a Federal Agency, or with federal financial assistance does not encompass the situation when a private party undertakes a federally assisted program or project and acquires property." *Young, supra* at 14.

Under Pennsylvania law, petitioner is still without a remedy. The Code is likewise so structured that a displaced person may recover benefits only from an acquiring agency. 26 P.S. Section 1-201(8). A person ag-

grieved by a determination as to eligibility may elect to have his application reviewed by the head of the *acquiring* agency, or his designee. Sec. 604-A(3). An acquiring agency is "any entity vested with power of eminent domain by the laws of the Commonwealth, including the Commonwealth." 26 P.S. Section 1-201(5).[3] The facts are clear that Franklin Town, the acquiring agency, is a private corporation without the power of eminent domain and is not subject to liability.

Petitioner seeks to circumvent this obstacle by characterizing the project as a joint undertaking between Franklin Town and the Authority whereby the Authority agreed to use its power of eminent domain if the properties in the Franklin Town Redevelopment Area could not be amicably acquired by Franklin Town. By virtue of this, petitioner claims that Franklin Town is an entity vested with the power of eminent domain.

The evidence is insufficient to establish that the activities of the Authority and Franklin Town are so intertwined that Franklin Town can be said to have the Authority's power of eminent domain. Franklin Town is controlled by private interests and has arranged to finance its project from totally private sources. The redeveloper is to bear the total cost of the project.

> "The creation of urban redevelopment corporations has not been interpreted as the conversion of private resources into a governmental entity. The states have enlisted the aid of private enterprise to combat urban blight, but have not sought to change the profit-motivated enterprises. *See, Berman v. Parker*, 348 U.S. 26, 33-34 (1954) (acquisition by

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[3] Section 201(8) also requires that the displacement result from an acquisition for a "program or project." Program or project means any program or project undertaken by or for an acquiring agency as to which it has the authority to exercise the power of eminent domain." Section 201(11) of the Eminent Domain Code.

federal agency, but redevelopment by private enterprise);" other citations omitted).

Young, supra at 16.

> "The focus is not on the degree of involvement by the Federal or State Agency, or a program of such agency which results in the acquisition, but is instead on whether the person involved was displaced by governmental action either acquiring the property or issuing an order to vacate the property. Neither situation is present in this case". *Moorer, supra.*

Moreover, this Court is required to strictly construe all provisions of a statute that confer the power of eminent domain. 1 Pa. C.S.A. Section 1928(b).[4] Under these circumstances, it is not possible for this Court to hold that Franklin Town does hold such a power.

Accordingly, the Court enters the following:

ORDER

AND NOW, this 17th day of August, 1979, Respondents' Preliminary Objections to Petition for Appointment of a Board of View are sustained.

BY THE COURT:

KALISH, J.

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[4] 1 Pa. C.S.A. Section 1928(b) reads as follows: "All provisions of a statute of the classes hereafter enumerated shall be strictly construed: . . . (4) Provisions conferring the power of eminent domain . . ."

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

Condemnation of 1711-13 Vine Street, Philadelphia, Pennsylvania by Commonwealth of Pennsylvania, Redevelopment Authority of the City of Philadelphia; and Franklin Town Corporation (Radio Broadcasting Co.)	:	NO. 1893 C.D. 1979
Radio Broadcasting Company, *Appellant*	:	
Radio Broadcasting Company *Appellant*	:	
v.	:	NO. 39 T.D. 1979
Franklin Town Corporation, et al., *Appellees*	:	

BEFORE:
HONORABLE JAMES C. CRUMLISH, President Judge
HONORABLE GLENN E. MENCER, Judge
HONORABLE THEODORE O. ROGERS, Judge
HONORABLE JOHN A. MacPHAIL, Judge
HONORABLE MADALINE PALLADINO, Judge

ARGUED:
October 7, 1980 — Philadelphia

OPINION

OPINION BY JUDGE ROGERS Filed: December 5, 1980

The appellant in this essentially eminent domain case, Radio Broadcasting Corporation (RBC), formerly a tenant occupying portions of a building at 1711-13 Vine Street, Philadelphia, is in pursuit of compensation or money damages from the Commonwealth of Pennsylvania acting by the Department of Transportation

(PennDOT),[1] the Redevelopment Authority of Philadelphia, and Franklin Town Corporation, a privately owned business corporation. To this end it instituted in the Court of Common Pleas of Philadelphia County two separate personal actions sounding in trespass, assumpsit and for declaratory judgment against the Redevelopment Authority, Franklin Town and fictionally named individuals. It also filed an original and amended Petition for the Appointment of Viewers, pursuant to Section 502 of the Eminent Domain Code, Act of June 22, 1964, Spec. Sess. P.L. 84, *as amended*, 26 P.S. §1-502, naming the Commonwealth the Redevelopment Authority and Franklin Town as respondents. RBC's amended Petition for the Appointment of Viewers, and a fourth action, an eminent domain proceeding commenced by PennDOT's filing of a Declaration of Taking of a portion of 1711-13 Vine Street, and one of RBC's personal actions were consolidated below into a single action captioned Condemnation of 1711-13 Vine Street by the Commonwealth of Pennsylvania, Redevelopment Authority of Philadelphia and Franklin Town Corporation, leaving separate the remaining personal action against the Redevelopment Authority, Franklin Town and unidentified individuals. The Redevelopment Authority and Franklin Town filed preliminary objections in the nature of demurrers to the consolidated eminent domain proceeding and to the personal action in trespass, assumpsit and for declaratory judgment. The court below sustained both demurrers. No objection is made to any of the procedures below or to the conduct of the hearing. RBC has appealed[2] from the orders dismissing its actions contending that the

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1. As will be revealed in the body of this opinion, RBC released the Commonwealth (PennDOT) during the pendency of these proceedings.
2. RBC appealed the order in the personal action to the Superior Court which transferred it to this court for disposition with the appeal of the order in the eminent domain matter.

court below committed errors of law in holding (1) that the personal action should fail because RBC had not stated a cause of action other than one depending entirely upon RBC's entitlement to an award under the Eminent Domain Code, and (2) that RBC was not a displaced person entitled to the reimbursement for expenses and losses incurred in moving from 1711-13 Vine Street, provided by Article VI-A of the Eminent Domain Code. We affirm the orders below.

With respect to the personal action in assumpsit, trespass and for a declaratory judgment, as Judge Jacob Kalish who had the matter in charge below pointed out, RBC's cause is based upon a so-called Assistance Agreement between the Redevelopment Authority and Franklin Town Corporation under which Franklin Town, a redeveloper agreed to pay any compensation the Redevelopment Authority might have to pay to displaced persons in accordance with the standards of the Federal Uniform Relocation Assistance Act, 42 U.S.C. §4601 et seq., (which standards are incorporated in Section 601-A of the Eminent Domain Code.[3] RBC avers that it is a displaced person under those standards and therefore a third party beneficiary of the Assistance Agreement. The court below correctly concluded that since RBC's entitlement to any benefits of the Assistance Agreement depended on its being a displaced person under Article VI-A of the Eminent Domain Code, its remedy was by proceeding under the Code, as indeed it had done.

After conducting two days of evidentiary hearings with respect to Redevelopment Authority's and Franklin Town's preliminary objections to RBC's petition for the Appointment of Viewers, Judge Kalish made the follow-

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3. Section 601-A of the Code was added by Section 8 of the Act of December 29, 1971, P.L. 64, 26 P.S. §1-601-A.

ing findings of fact which constitute an economical and accurate statement of the facts:

1. Radio Broadcasting Company ("RBC") is a Pennsylvania corporation engaged in the radio-wave communication business, and at all times material was the holder of a Public Utilities Commission certificate requiring RBC to provide continuous service.

2. Redevelopment Authority of the City of Philadelphia ("Redevelopment Authority") is an urban redevelopment authority vested with the power of eminent domain.

3. Franklin Town Corporation ("Franklin Town") is a Pennsylvania corporation privately held and financed.

4. Department of Transportation-Commonwealth of Pennsylvania ("PennDOT") is a department of State government vested with the power of eminent domain.

5. Albert and Edith Glassberg (hereinafter "Owners") at all times material owned 1711-13 Vine Street, Philadelphia, Pennsylvania.

6. On June 16, 1960 the Owners leased the second floor of 1711-13 Vine Street to RBC for a term of 3 years, with annual renewals thereafter unless terminated by 90 day notice.

7. Thereafter RBC occupied the second floor of 1711-13 Vine Street, and later on enjoyed roof rights under the lease.

8. In 1968 RBC built a sophisticated electronic computer terminal in the front portion of its leasehold space which was improved upon in subsequent years.

9. In late 1969, PennDOT announced its plans for acquisition of the Vine Street frontage including the first 10 feet of the building located at 1711-13 Vine Street in connection with the proposed Vine Street Expressway.

10. As a result of the foreseeable PennDOT taking, the Owner refused to renegotiate RBC's lease to give a longer term.

11. PennDOT's taking of the building would have cut through a critical portion of RBC's terminal, which would have interrupted service, forbidden under the terms of RBC's P.U.C. license.

12. As a consequence, RBC embarked on a search for suitable leasehold space to move to in the future, and in early 1971 RBC entered into a lease with River Park House, 3600 Conshohocken Ave., Phila., Pa. for a five year period beginning June 1, 1971.

13. On June 3, 1971 Franklin Town announced its redevelopment project which included premises 1711-13 Vine Street within its boundaries.

14. On June 16, 1971, the redevelopment Authority and Franklin Town executed an "Assistance Agreement," whereby Franklin Town Corporation agreed to pay relocation payments to displaced occupants. Subsequently, the Authority and Franklin Town entered into a Redevelopment contract.

15. RBC decided to install a new terminal at River Park House, then shut off the old terminal at 1711-13 Vine Street when the new one was put into operation, because physically moving the old terminal would interrupt service, and might result in serious damage to the electronic components in the terminal.

16. PennDOT filed a Declaration of Taking which included a strip of the front of the building at 1711-13 Vine Street on October 24, 1972.

17. On January 18, 1973, PennDOT notified petitioner that a "decision has been made by our engineering staff to eliminate the take on the property you occupy at 1711-13 Vine Street. Therefore, it will be unnecessary to relocate your operation."

18. PennDOT did not at any time relinguish its condemnation of premises 1711-13 Vine Street, Phila., PA.

19. On February 9, 1973, Franklin Town entered into an Agreement of Sale with the Owner of 1711-13 Vine Street to purchase 1711-13 Vine Street. Franklin Town required in the agreement that the seller have the burden of evicting RBC. Possession was to be given at time of settlement, July 2, 1973. This purchase was in lieu of condemnation of these premises by the Redevelopment Authority.

20. On February 19, 1973, the owners of 1711-13 Vine Street by their attorney notified RBC that its lease would terminate on June 30, 1973, the end of the then current term.

21. On April 26, 1973, a Declaration of Taking was filed by the Redevelopment Authority for the Franklin Town Urban Renewal Area, which area had at its southern boundary in the 1700 block, Vine Street, but which did not include 1711-13 Vine Street. The property was to be acquired for a plan or project involving a blighted area.

22. On May 29, 1973, Franklin Town Corporation settled 1711-13 Vine Street with the owners, escrowing $70,000.00 of the proceeds to secure the vacancy at the end of RBC's lease in June 30, 1973.

23. On November 8, 1973, Franklin Town advised counsel for RBC that RBC must vacate the premises by November 30, 1973 or counsel for the owners, Albert L. Glassberg and Eva Glassberg, would compel eviction.

24. RBC, having completed its replacement terminal, abandoned its old terminal and other equipment at 1711-13 Vine Street on January 31, 1974, and moved to River Park House.

25. 1711-13 Vine Street was vacant from January 31, 1974 until it was demolished by Franklin Town in the Spring of 1976.

Findings 10, 11, and 12, it will be noted, record that RBC's landlord refused to renegotiate the lease of 1711-13 Vine Street because of PennDOT's proposed acquisition; and that as a consequence of this refusal and of PennDOT's proposal to take the property, RBC in 1971 sought and found new quarters for its operations. Other evidence in the record not recorded as a finding showed that the relocation of RBC's terminal and other equipment was known in advance to, and actually did, require a matter of years to accomplish because RBC had to provide continuous service. In any event, this work begun in 1971 continued until RBC relocated in January 1974, some six months after the expiration of the last annual term of the lease of 1711-13 Vine Street. Another fact not recorded in the findings worth mentioning, although not necessary to a solution of this case is that RBC at or just before the hearing below began, formally settled with and released PennDOT. The terms of settlement do not appear in this record.

The court below correctly concluded that RBC was not a displaced person as defined in the Eminent Domain Code and was not therefore entitled to reimbursement for the removal expenses or other dislocation damages provided by Article VI-A, particularly Section 601A, 26 P.S. § 1-601A.

The Uniform Relocation Assistance and Real Property Acquisition Policies, Act of 1970, 42 U.S.C. § 4601, was enacted by Congress on January 2, 1971. Its purpose was to establish a uniform policy for the fair and equitable treatment of persons displaced as the result of Federal and federally assisted programs. Article VI-A was added to the Eminent Domain Code by the Act of December 29, 1971, P.L. 640, in order that Pennsylvania acquiring agencies might obtain maximum Federal reimbursement. Not only does Article VI-A contain explicit expression of this intention (see Section 601A(5), 26 P.S. § 601A), much of Article VI-A is a paraphrase of the Federal statute.

The Federal statute defines a displaced person as:

> "any person who, on or after the effective date of this Act moves from real property or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance. . . ." 42 U.S.C. § 4601 (6).

The Eminent Domain Code's definition of a displaced person, at Section 201 (8), 26 P.S. §1-201 (8), is:

> "any condemnee or other person not illegally in occupancy of real property who moves or moves his personal property as a result of the acquisition for a program or project of such real property, in whole or in part, or as the result of written notice from the acquiring agency of intent to acquire or order to vacate such real property. . . ."

The Federal definition has been definitively interpreted as not applying to acquisitions causing displacements effected by private developers. In *Young v. Harris*, 599 F.2d 870 (8 Cir. 1979), low income residents of

a city redevelopment area sought to restrain redevelopment because the developer, a private party (although having power of eminent domain), had failed to observe the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. The District Court's denial of a preliminary injunction was affirmed on the ground, *inter alia,* that the developer acquiring the property was a private party and not a Federal, State or local governmental agency. The Court wrote:

> "It is the established law in this circuit that the URA definition of 'program or project undertaken by a Federal agency, or with Federal financial assistance' does not encompass the situation when a private party undertakes a federally assisted program or project and acquires property. Moorer v. Department of Housing and Urban Development, 561 F.2d 175 (8th Cir. 1977), cert. denied, 436 U.S. 919, 98 S.Ct. 2266, 56 L.Ed. 2d 760 (1978); see also Alexander v. United States Department of Housing and Urban Development, _____ U.S. ____, ____ n.9, 99 S.Ct. 1572 n.9, 60 L.Ed. 2d 28 n.9 (1979); Conway v. Harris, 586 F.2d 1137 (7th Cir. 1978); Parlane Sportswear Co. v. Weinberger, 513 F.2d 835 (1st Cir.), cert. denied, 423 U.S. 925, 96 S.Ct. 269, 46 L.Ed.2d 252 (1975). Thus the URA would not apply to the Pershing-Waterman redevelopment project if it were found that the project had been undertaken by a private party as opposed to a federal, state, or local governmental agency. . . . Resolution of . . . [this issue] . . . depends upon whether the appellants' characterization of the project as a joint undertaking in the nature of a partnership between the private developer and the City of St. Louis accurately portrays the organization of the project. We find that the evidence is clearly inadequate to establish that the activities of the City of St. Louis and the private developer are sufficiently inter-

twined to characterize them as one project undertaken by a state instrumentality."

Id. at 877.

Obviously the definition of displaced person in the Eminent Domain Code tracks that of the Federal statute in providing that a displaced person is one who moves "as a result of the acquisition for a program or project." Section 201 (11), 26 P.S. § 1-201 (11) defines a program or project as one undertaken "by or for an acquiring agency as to which it has authority to exercise the power of eminent domain", and Section 201 (5) defines an acquiring agency as "any entity vested with the power of eminent domain." 1711-13 Vine Street was not acquired by Franklin Town for a program or project and Franklin Town was not an acquiring agency, within the definitions provided. Judge Kalish clearly, fully and correctly analyzed these points.

Additional authority against RBC's claim under Article VI-A is the case of *Hindsley v. Township of Lower Merion*, 25 Pa. Commonwealth Ct. 455, 360 A.2d 297 (1976), where this court held that a tenant of a property purchased by a municipality which, after the purchase, leased the premises to the tenant for another six month's term, was not a displaced person when required to move at the end of the new term, because the move was not the result of the acquisition of the property for a program or project but because the tenant's legal occupancy had ended. Here, not only is Franklin Town not an acquiring agency, it agreed to an extension of the term of RBC's existing lease from June 30, 1973 until December 31, 1973, and RBC remained in possession until January 1974.

RBC says next that there was a *de facto* taking of its leasehold interest in portions of 1711-13 Vine Street, by Franklin Town and the Authority working together. The facts which are said to support this contention are that

the 1711-13 Vine Street building was included in the publicized plan for the Franklin Town project; that representatives of the Authority visited RBC's premises inquiring about the value of its property there located; that the Authority agreed that it would condemn property in the area; and that RBC's landlord terminated RBC's lease at the instance of Franklin Town after the latter purchased 1711-13 Vine Street.

The circumstances depended on are clearly insufficient to establish a deprivation of RBC's use and enjoyment of the rented property. *Helms v. Chester Redevelopment Authority*, 32 Pa. Commonwealth Ct. 377, 379 A.2d 660 (1977). Furthermore, in claiming to be the victim of a *de facto* taking, RBC is required to show that it is a condemnee not merely a displaced person entitled to relocation benefits. *Fisher v. Pittsburgh Public Parking Authority*, 433 Pa. 113, 248 A.2d 849 (1969), is authority for the proposition that the lessee of property purchased by a municipal authority is not entitled, after the termination of his lease, to the status of a condemnee under the Eminent Domain Code.

RBC's further arguments: that the record shows that the activities of the Redevelopment Authority and Franklin Town were so intertwined that, although Franklin Town's purchase was that of a private entity, it should be considered the act of the Redevelopment Authority; that it has been denied various constitutional guarantees; and that it should have damages for delay in payment of compensation — have been considered and are without merit.

Finally, RBC filed in this court what it terms a motion to quash portions of Franklin Town's brief. We may suppress a brief or portions of a brief for failure to conform to the rules of court — Pa. R.A.P. No. 2101 — but we know of no authority for suppressing an appellee's brief for taking issue with a finding or conclusion of the

lower court. A party who has prevailed below cannot appeal; but he is not required to agree with everything that happened or was decided below. It was entirely appropriate for Franklin Town to argue on this record that RBC moved only because of PennDOT's condemnation and because it needed more space for its operation, of which latter there was some evidence in the record. Further, Judge Kalish did not find, as RBC argues, that RBC was a displaced person; he concluded that it was not.

The court below correctly decided that RBC was not a displaced person entitled to reimbursement for expenses and payment for losses under Article VI-A; that RBC was not a *de facto* condemnee; and that therefore RBC's amended Petition for the Appointment of Viewers and its personal action did not state causes against Franklin Town or the Redevelopment Authority or the latter's unnamed agents.

Orders affirmed.

Theodore O. Rogers, J.

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

Condemnation of 1711-13 Vine Street, Philadelphia, Pennsylvania by Commonwealth of Pennsylvania, Redevelopment Authority of the City of Philadelphia; and Franklin Town Corporation (Radio Broadcasting Co.)	:	NO. 1893 C.D. 1979
Radio Broadcasting Company, *Appellant*	:	
Radio Broadcasting Company *Appellant*	:	
v.	:	NO. 39 T.D. 1979
Franklin Town Corporation, et al., *Appellees*	:	

ORDER

AND NOW, this 5th day of December, 1980, the Orders docketed below at No. 3985 February Term 1978 and No. 872 February Term 1979 are affirmed.

Theodore O. Rogers, J.

CERTIFIED FROM THE RECORD
DEC. 5 1980

/s/ Francis C. Barbush
CHIEF CLERK

Opposition

Office-Supreme Court, U.S.
FILED
SEP 21 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-368

IN THE

Supreme Court of the United States

October Term, 1981

RADIO BROADCASTING CO.,

Petitioner

v.

FRANKLIN TOWN CORPORATION and REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA and RICHARD ROE and JOHN DOE, and OTHERS,

Respondents

On Petition for Writ of Certiorari to the Commonwealth Court of Pennsylvania

BRIEF OF RESPONDENTS REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA AND FRANKLIN TOWN CORPORATION IN OPPOSITION

WILLIAM T. STEERMAN*
1920 Two Penn Center Plaza
15th and John F. Kennedy Blvd.
Philadelphia, PA 19102
(215) 665-8905
Attorney for Respondent Redevelopment Authority of the City of Philadelphia

Of Counsel:
PETER A. GALANTE

TYSON W. COUGHLIN*
BALLARD, SPAHR, ANDREWS & INGERSOLL
United Engineers Building
30 South 17th Street
Philadelphia, PA 19103
(215) 564-1800
Attorney for Respondent Franklin Town Corporation

*Counsel of Record

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Is there a substantial Federal Constitutional question present where a commercial tenant's lease is terminated according to its terms by a landlord pursuant to an agreement of sale entered into between the landlord and a purchaser who has acquired the property in lieu of condemnation with private funds, and the lower court has determined that the tenant is not a "displaced person" under the local Eminent Domain Code?

2. Is there a substantial Federal Constitutional question present where the Commonwealth Court of Pennsylvania has determined that all claims for condemnation damages under Pennsylvania law must be brought pursuant to the procedures set forth in the Pennsylvania Eminent Domain Code?

TABLE OF CONTENTS

	Page
Counter-Statement of the Questions Presented	i
Table of Citations	iii
Opinions Below	1
Jurisdiction	1
Statutes Involved	1
Counter-Statement of the Case	2
A. Statement of the Facts	2
B. The Proceedings Below	3
Reasons for Denying the Writ	5

TABLE OF CITATIONS

Cases: Page

Appeal of Union Electric Contracting Co., 39 Pa. Commonwealth Ct. 584, 396 A. 2d 862 (1979) 5

Fisher v. Pittsburgh Public Parking Authority, 433 Pa. 113, 248 A. 2d 849 (1969) 6

Helms v. Chester Redevelopment Authority, 32 Pa. Commonwealth Ct. 377, 379 A. 2d 660 (1977) 6

Hindsley v. Township of Lower Merion, 25 Pa. Commonwealth Ct. 455, 360 A. 2d 296 (1976) 7

Lerro v. PennDot, 32 Pa. Commonwealth Ct. 372, 379 A. 2d 652 (1977) 5

Young v. Harris, 599 F. 2d 870 (8th Cir. 1979) 6

Miscellaneous:

Pennsylvania Eminent Domain Code, 1964, Special Sess., June 22, P. L. 84, Art. VI-A, § 601-A, added 1971, Dec. 29, P. L. 640, No. 16938; 26 P. S. § 1-201, et seq. .i, 1, 3, 4, 5, 6

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U. S. C. § 4601) 6

U. S. Constitution, Fifth and Fourteenth Amendments 7

28 U. S. C. § 1257(c) 1

OPINIONS BELOW

The opinion of the Commonwealth Court of Pennsylvania which unanimously affirmed the orders entered by the Court of Common Pleas, Philadelphia County in two cases is reported at 423 A. 2d 451 (1980) and is reproduced in the appendix to the Petition for Writ of Certiorari (A-69).

The opinion of the Court of Common Pleas, Philadelphia County at No. 872 is unreported and is printed in the appendix to the Petition for Writ of Certiorari (A-55).

The opinion of the Court of Common Pleas, Philadelphia County at No. 3985 is unreported and is printed in the appendix to the Petition for Writ of Certiorari (A-58).

JURISDICTION

According to the Petition for Writ of Certiorari, jurisdiction of this Court is invoked under 28 U. S. C. § 1257(c).

STATUTES INVOLVED

Insofar as respondents herein Redevelopment Authority of the City of Philadelphia and Franklin Town Corporation * are concerned, the statute involved in the Petition for Writ of Certiorari is the Pennsylvania Eminent Domain Code, 1964, Special Sess., June 22, P. L. 84, Art. VI-A, § 601-A, added 1971, Dec. 29, P. L. 640, No. 16938; 26 P. S. § 1-201, et seq. Relevant portions of the statute are printed in the Petition for Writ of Certiorari at pages 2-4, except for § 201(5) which reads:

> § 1-201. Definitions
>
> (5) "Acquiring agency" means any entity vested with the power of eminent domain by the laws of the Commonwealth, including the Commonwealth.

* The parties to the proceeding below are listed in the caption.

COUNTER-STATEMENT OF THE CASE

A. Statement of the Facts

In June 1960 Albert and Edith Glassberg, the owners of 1711-13 Vine Street, Philadelphia, Pennsylvania, leased the second floor of that property to Radio Broadcasting Company ("RBC") for a term of three years with annual renewals thereafter unless terminated on 90 days notice. RBC subsequently installed a sophisticated electronic computer terminal on the leased premises which was utilized in its radio paging business.

In late 1969 the Pennsylvania Department of Transportation ("PennDOT") announced plans for the acquisition of Vine Street frontage which included 10 feet of the building leased by RBC. As a result, the Glassbergs refused to renegotiate RBC's lease to provide for a longer term.

Because of PennDOT's announced intentions, RBC embarked on a search for suitable substitute leasehold space and in early 1971 concluded a lease with River Park House, 3600 Conshohocken Avenue, Philadelphia, Pennsylvania for a five year period beginning June 1, 1971.

On June 3, 1971 Franklin Town Corporation ("Franklin Town"), a private—and privately financed—real estate developer, announced its redevelopment project in that section of Philadelphia which included 1711-13 Vine Street and which had been designated a Redevelopment Area by the City of Philadelphia.

In June 1971 Franklin Town and the Redevelopment Authority of the City of Philadelphia ("Redevelopment Authority") executed an agreement pursuant to which the Authority agreed to acquire properties through its powers of eminent domain in the redevelopment area and Franklin Town agreed to pay relocation payments to displaced occupants.

On October 24, 1972 PennDOT filed its Declaration of Taking which included the strip of the front of the Vine Street building leased by RBC. By that time RBC had decided to install a new computer terminal at River Park House and then shut off the old terminal at Vine Street because physically moving the old terminal would interrupt its paging service. Although PennDOT subsequently informed RBC that it would relinquish its take, it never withdrew its Declaration, and RBC continued to move forward with its relocation.

On February 9, 1973 the Glassbergs agreed to sell 1711-13 Vine Street to Franklin Town with possession to be given free of leasehold interests at the time of settlement on or before July 2, 1973. In addition to the basic consideration, Franklin Town agreed to pay $65,000 to the Glassbergs for their rights as against PennDOT.

The Glassbergs notified RBC on February 19, 1973 that RBC's lease would not be renewed at the end of its term on June 30, 1973.

On May 29, 1973 Franklin Town settled with the owners of 1711-13 Vine Street and took possession of the property.

In November 1973 Franklin Town advised RBC that it would have to vacate the premises by November 30, 1973, but thereafter permitted RBC to continue on the premises until January 1974.

On January 31, 1974 RBC, having completed its replacement terminal, abandoned its old terminal and other equipment at 1711-13 Vine Street and moved to River Park House.

B. The Proceedings Below

On October 23, 1975 RBC filed two petitions for the appointment of a Board of Viewers pursuant to the procedures established by the Pennsylvania Eminent Domain

Code, 26 P. S. § 1-201 et seq., and an action in assumpsit and trespass seeking recovery of condemnation damages. The trial court after consolidation dismissed the action in assumpsit and trespass on the grounds that the exclusive procedure for such claims had to be under the Eminent Domain Code. The trial court also dismissed the petitions for the appointment of a Board of Viewers on the grounds that the petitioner was not a "displaced person" as defined by the Eminent Domain Code and that the actions of Franklin Town and the Redevelopment Authority did not constitute a de-facto taking under Pennsylvania law.

Both decisions were unanimously affirmed by the Commonwealth Court of Pennsylvania, and on June 30, 1981 the Pennsylvania Supreme Court denied RBC's Petition for Allowance of Appeal.

REASONS FOR DENYING THE WRIT

This Court should deny the Petition for a Writ of Certiorari because the State court proceedings do not involve a substantial Federal question. Indeed, there is nothing novel or unusual about this case.

The first issue, briefly stated, is whether in an essentially eminent domain action, an alleged condemnee may maintain a separate action in assumpsit and trespass as a third party beneficiary against a developer who contracted with an Urban Redevelopment Authority to pay all relocation costs for "displaced persons" under the Pennsylvania Eminent Domain Code. The trial court clearly and concisely followed the holding in *Appeal of Union Electric Contracting Co.*, 39 Pa. Commonwealth Ct. 584, 396 A. 2d 862 (1979) which states that "once a Board of Viewers has been appointed, it has jurisdiction over all claims for special damages." (See also *Lerro v. PennDot*, 32 Pa. Commonwealth Ct. 372, 379 A. 2d 652 (1977)). The Commonwealth Court of Pennsylvania sustained the trial court and held that the claim of petitioner was spurious, must be merged in the Petition for the Appointment of a Board of Viewers and that petitioner's rights stood or fell upon its claims in that action.

The second issue presented is whether a tenant whose lease is terminated by a landlord under its terms following an amicable acquisition of the property by a developer in lieu of condemnation, is a "displaced person" as defined by the Pennsylvania Eminent Domain Code entitled to compensation for its machinery, equipment and fixtures or is a condemnee under an alleged de facto condemnation. The trial court held that it was not.

The Commonwealth Court of Pennsylvania, in rejecting petitioner's claims as a "displaced person" and as a condemnee of a de-facto taking stated (A-79):

> The circumstances depended on are clearly insufficient to establish a deprivation of RBC's use and enjoyment of the rented property. *Helms v. Chester Redevelopment Authority,* 32 Pa. Commonwealth Ct. 377, 379 A. 2d 660 (1977). Furthermore, in claiming to be the victim of a de facto taking, RBC is required to show that it is a condemnee not merely a displaced person entitled to relocation benefits. *Fisher v. Pittsburgh Public Parking Authority,* 433 Pa. 113, 248 A. 2d 849 (1969), is authority for the proposition that the lessee of property purchased by a municipal authority is not entitled, after the termination of his lease, to the status of a condemnee under the Eminent Domain Code.

Petitioner now raises additional reasons in its Petition for a Writ of Certiorari—the deprivation of Federal Constitutional guarantees. The Constitutional issue was not specifically raised in the lower court; an allusion to the use of federal funds was disposed of by the trial court and the Commonwealth Court of Pennsylvania through testimony and findings that no public funds were involved in the urban renewal project, noting that Franklin Town Corporation "agreed to pay relocation payments to displaced occupants" (A-73), citing *Young v. Harris,* 599 F. 2d 870 (8th Cir. 1979). Nowhere was there a clear, distinct and positive averment that petitioner intended to assert a federal right.

The Commonwealth Court of Pennsylvania fully covered the federal statutes and definition of a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U. S. C. § 4601), and the Eminent Domain Code of Pennsylvania is almost identical in language. Despite petitioner's claim that it was a displaced person who moved "as a result of

the acquisition for a program or project", the Commonwealth Court in supporting the trial court and affirming its Order found that "Petitioner's property at 1711-13 Vine Street was not acquired by Franklin Town for a program or project and Franklin Town was not an acquiring agency, within the definitions provided." (A-78). In the absence of new evidence, an assertion to the contrary should not be entertained by this Court.

Eleven Judges in Pennsylvania have not perceived the existence of a substantial Constitutional issue and a clear reading of petitioner's brief and of the case of *Hindsley v. Township of Lower Merion*, 25 Pa. Commonwealth Ct. 455, 360 A. 2d 296 (1976) leads inexorably to the conclusion that this is a plain and simple case of a landlord and tenant dispute in which landlord-tenant law must prevail. The judgment of the Commonwealth Court of Pennsylvania rested upon State law and not upon any federal ground.

It is not unusual for a would-be condemnee who loses his case in a lower court to assert the time honored cry that its rights under the Fifth and Fourteenth Amendments of the Constitution have been violated. The decision of the Commonwealth Court of Pennsylvania amply supports the findings that this project was not federally assisted in any stage, that there was nothing in the Urban Development Law to prohibit a developer from purchasing property prior to condemnation and that the claim of denial of constitutional guarantees "have been considered and are without merit" (A-79).

This case was decided adversely to the petitioner on the basis of State law. It is only in exceptional and unusual cases that this Court will consider questions urged by petitioner not pressed upon in the Court below. This is not such a case. It does not present a substantial Federal question and therefore further review by this Court is

inappropriate. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM T. STEERMAN
Attorney for Respondent,
Redevelopment Authority of the
City of Philadelphia

TYSON W. COUGHLIN
Attorney for Respondent,
Franklin Town Corporation

Of Counsel:
PETER A. GALANTE

Petitioner's Reply Brief

Office-Supreme Court, U.S.
FILED
SEP 28 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-368

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1981

RADIO BROADCASTING CO.,
Petitioner

v.

FRANKLIN TOWN CORPORATION AND
REDEVELOPMENT AUTHORITY OF THE
CITY OF PHILADELPHIA
AND RICHARD ROE AND JOHN DOE, AND OTHERS,
Respondents

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

PETITIONER'S REPLY MEMORANDUM

S. Jay Sklar
C. George Milner
Suite 1229
Public Ledger Building
Philadelphia, PA 19106
(215) 922-1550

THE LEGAL INTELLIGENCER, 10th & SPRING GARDEN STREETS, PHILA., PA 19123 (215) 236-2000

TABLE OF CONTENTS

Page

A. THE CONSTITUTIONAL ISSUE WAS RAISED IN THE IN THE BRIEF BELOW, AND WAS PASSED ON BY THE HIGHEST STATE COURT 1

B. THE FEDERAL QUESTION IS THE CONSTITUTIONAL QUESTION; THE PARAMOUNT ISSUE IS WHETHER PENNSYLVANIA LAW VIOLATES THE FIFTH AMENDMENT BY SANCTIONING A TAKING FOR A PUBLIC PURPOSE WITHOUT ANY COMPENSATION 2

C. THE ASSERTION THAT RADIO BROADCASTING WAS CONTEMPLATING RELOCATION NOTWITHSTANDING FRANKLIN TOWN'S ACQUISITON IN LIEU OF CONDEMNATION IS MISLEADING 3

TABLE OF AUTHORITIES

Cases:

Almota Farmers E. & W. Co. v. United States, 409 U.S. 470 (1973) 2

Dohaney v. Rogers, 281 U.S. 362 (1929) 3

Raley v. Ohio, 360 U.S. 423 (1959) 2

CONSTITUTIONAL PROVISIONS AND STATUTUES

Page

Constitution, Amendment V 1, 2, 3

No. 81-368

IN THE
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October Term, 1981

RADIO BROADCASTING CO.,
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FRANKLIN TOWN CORPORATION AND
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AND RICHARD ROE AND JOHN DOE, AND OTHERS,
Respondents

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

PETITIONER'S REPLY MEMORANDUM

A. THE CONSTITUTIONAL ISSUE WAS RAISED IN THE PLEADINGS, IN THE BRIEF BELOW, AND WAS PASSED ON BY THE HIGHEST STATE COURT.

Respondents state in their opposition brief that Petitioner never raised the fundamental Fifth Amendment Constitutional issue of taking without "just compensation".

This statement is untrue.

The Constitutional issue (Amendment V) was first raised in the initial pleading in this case, in Paragraph 9 of the Petition for Appointment of a Board of View:

> "9. Redevelopment Authority, and its designated developer Franklin Town, is liable to Petitioner for the expense of the said move under the Eminent Domain Code, the *Federal Constitution*, the Constitution of the Commonwealth of Pennsylvania and other applicable law." (Emphasis added).

Petitioner's brief to the Commonwealth Court likewise argued the unconstitutionality of the taking without compensation. Indeed, a whole section discussed this issue as a Question Presented. The Commonwealth Court brief also cited *Almota Farmers E. & W. Co. vs. United States*, 409 U.S. 470 (1973). Finally, the Commonwealth Court said that they had considered the Constitutional questions, and found Radio Broadcasting's arguments to be without merit. Franklin Town and Redevelopment Authority even acknowledge that the Constitutional questions came before the Commonwealth Court (see Page 7 of the Brief in Opposition to the Petition for Certiorari). This Court has held:

> "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it." *Raley vs. Ohio*, 360 U.S. 423, 436.

B. THE FEDERAL QUESTION IS THE CONSTITUTIONAL QUESTION; THE PARAMOUNT ISSUE IS WHETHER PENNSYLVANIA LAW VIOLATES THE FIFTH AMENDMENT BY SANCTIONING A TAKING FOR A PUBLIC PURPOSE WITHOUT ANY COMPENSATION.

The balance of Franklin Town and Redevelopment Authority's argument is that this Court should not consider our case because it was properly decided under the law of Pennsylvania.

They have missed the point entirely.

The point is that the law of Pennsylvania (as decided in our case and the cited State precedents) violates the Federal Constitution, Amendment V. In 1929 this Court decided that the Fifth Amendment entitlement to "just compensation" was applicable to state action. *Dohany vs. Rogers*, 281 U.S. 362. This means that where property is condemned, or "acquired in lieu of condemnation" by the State Agency's designated developer (as here), and the condemnee suffers a machinery, equipment and fixture loss, the Federal Constitution requires that the condemnee receive "just compensation". It is no more complicated than that.

Respondents' arguments, viz. that Pennsylvania landlord-tenant law says otherwise, and that there was no Federal funding in our case are irrelevant statements because they do not speak to the issues raised in the Petition for Certiorari.

There is a Federal standard for the payment of "just compensation" and it is applicable in all cases, State and Federal, and in all states. It is the fundamental law of the land, and there are no exceptions to it. It is Amendment V: "Nor shall private property be taken for public use without just compensation."

C. THE ASSERTION THAT RADIO BROADCASTING WAS CONTEMPLATING RELOCATION NOTWITHSTANDING FRANKLIN TOWN'S ACQUISITION IN LIEU OF CONDEMNATION IS MISLEADING.

Franklin Town and Redevelopment Authority's Statement of the Case implies that Radio Broadcasting Company had been constructing a new terminal at its substitute location from early on, beginning in 1971 and continuing uninterrupted through January, 1974, when Radio Broadcasting left its old location (". . . Radio Broadcasting Company continued to move forward with its relocation". p. 3). This implication, and the statement of Judge Rogers in the Commonwealth Court opinion

that "the relocation of Radio Broadcasting Company's terminal . . . was known in advance to, and actually did, require a matter of years to accomplish . . ." is misleading (Petition, A-75). One would conclude that building a new electronics terminal took years. It did not. In fact, the work of building a new terminal was begun in July, 1973, seven months after PennDot (the Pennsylvania Highway Department) abandoned their project, and over six months after Radio Broadcasting Company was required to leave under the Franklin Town agreement of sale with Radio Broadcasting's landlord. The point is that finding a new location took some time (and PennDot paid for these comparatively light expenses, which they caused). Building a new electronics terminal took about six months (July, 1973 through January, 1974). Radio Broadcasting Company could have easily abandoned its moving plans when the Pennsylvania Highway Department abandoned their plans. They could have cancelled the alternate leasehold and stayed put. Franklin Town caused the move by acquiring the real estate and beginning the eviction process. The Trial Judge said it in the plainest terms possible:

> "This is not a situation where plaintiff's property was injured by a public agency where there was no taking at all. . . . Here, however, there was a condemnation and an amicable acquisition in lieu of condemnation." (Petition, A-57)

The statements of Franklin Town, Redevelopment Authority and Judge Rogers should be recognized for what they are, misleading implications.

The importance of the Questions Presented for Review have not been denied. Franklin Town and Redevelopment Authority only claim that the issues were not raised before and that they are insubstantial. By refusing to respond to the issues on the merits, Franklin Town and Redevelopment Authority impliedly admit that there

is no meritorious, germane argument why Radio Broadcasting Company should not be paid for its property loss. Indeed, summary reversal appears in order here.

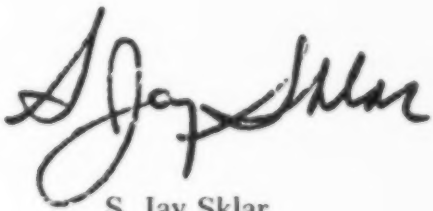
Respectfully submitted,

Date: September 25, 1981

S. Jay Sklar
C. George Milner
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 1981, three copies of the Petitioner's Reply Memorandum were mailed by first class mail, postage prepaid to William T. Steerman, Esquire, 1920 Two Penn Center Plaza, 15th and J. F. Kennedy Boulevard, Philadelphia, Pennsylvania 19102, Special Counsel for Respondent Redevelopment Authority of the City of Philadelphia, Peter A. Galante, Esquire, 1234 Market Street, Philadelphia, Pennsylvania 19107, General Counsel for Respondent Redevelopment Authority of the City of Philadelphia, and Tyson W. Coughlin, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street, Philadelphia, Pennsylvania 19103, attorney for Respondent Franklin Town Corporation; I further certify that all parties required to be served have been served.



S. Jay Sklar